

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

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In the Matter of Wynn MA, LLC)
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PREAMBLE

The Commission recognizes that at the heart of its responsibilities is an obligation to ensure public confidence in the integrity of the gaming license process and strict oversight of the gaming establishments. Our lawmakers set the stakes high when they capped the number of full casino licenses at up to three. The award of a gaming license in Massachusetts was never intended to be anything short of a peerless privilege and our laws require gaming licensees to be held to the highest standards – on a continuing basis. We have exercised care as we weighed the evidence in this matter, conforming to the standards of review required of us. At no time was it our obligation to assess the truth of the allegations that gave rise to this matter. Indeed, given systemic corporate failures, the truth may never be uncovered, which troubled us most. We are, however, at an important juncture and we recognize that no casino in Massachusetts should ever operate at the risk of the safety and well-being of its employees. We note the artificial lines drawn by the licensee in this matter, attempting to distinguish sexual assault and misconduct from acts where power is so unequally distributed that individual choice is inherently absent. We in the Commonwealth will always err on behalf of the most vulnerable and expect our corporate citizens to lead in that effort. The law of Massachusetts affords the Commission significant breadth in our decision-making. With that comes an equally significant duty of fairness. We are confident that we have struck the correct balance and met our legal and ethical burdens.

DECISION AND ORDER

This matter came before the Massachusetts Gaming Commission (“Commission”) to address certain issues presented in the comprehensive report (“IEB Report”) issued by the Investigations and Enforcement Bureau (“IEB”) relative to the status of the holder of the Region A gaming license, Wynn MA, LLC, and its qualifiers, Wynn Resorts, Limited and such other individuals as described in this decision (collectively, “the Company”). The Commission conducted an adjudicatory hearing to consider the matter, as requested by the Company, from April 2, 2019, through April 4, 2019, at the Boston Convention and Exposition Center in Boston, Massachusetts. **For the reasons that follow, the Commission has determined that Wynn MA, LLC, Wynn Resorts, Limited, Matthew Maddox, Elaine Wynn, and Elizabeth Patricia Mulroy remain suitable, subject to the fines and conditions set forth in this decision, and all new qualifiers are deemed suitable.** While the Commission did not find substantial evidence that the Company or any qualifier willfully provided false or misleading information to the

Commission during the RFA-1 process conducted in 2013, the Commission did find numerous violations of controlling statutes and regulations largely pertaining to a pervasive failure to properly investigate in accordance with existing policies and procedures and to notify the Commission about certain allegations of wrongdoing. The Commission is deeply troubled by the circumstances of these findings. Accordingly, the Commission is assessing Wynn Resorts, Limited a significant penalty, along with a series of license conditions designed both to help ensure future compliance and to punish for past transgressions. In addition, the Commission identified a series of deficiencies on the part of CEO Matthew Maddox and thus likewise imposes a fine and conditions upon his qualifier status.

I. LEGISLATIVE AND LICENSING BACKGROUND

In 2011, the Massachusetts General Court enacted the law creating casino gaming in Massachusetts (“the Gaming Act”). See G.L. c. 23K. The paramount objective of the Gaming Act is “ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme.” G.L. c. 23K, § 1(1). Further, “gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability.” Id. § 1(3). Among other things, the Gaming Act created a five-member Commission and required that the Commission begin its work no later than March 2012. In order to begin the process of issuing category 1 and category 2 gaming licenses,¹ the Commission elected to bifurcate the process of awarding a license by requiring all applicants, whether for a category 1 or category 2 license, to establish suitability (the “RFA-1” process) prior to filing an application describing the category 1 or category 2 location and project design (the “RFA-2” process).

The IEB, with the help of consultants, began the RFA-1 process on all applicants. The IEB completed the investigation of the Company in the fall of 2013. The IEB issued an investigative report and the Commission held an adjudicatory proceeding on the Company’s suitability on December 16, 2013. The Commission issued a positive determination of suitability to the Company in a written decision dated December 27, 2013.

The positive determination of suitability allowed the Company to file its RFA-2 application for a category 1 gaming license in the Region A city of Everett. Mohegan Sun Massachusetts also submitted an RFA-2 application in Region A, having also received a positive determination of suitability. The Commission reviewed both applications in a competitive process and awarded the Region A, category 1 gaming license to Wynn MA, LLC on September 17, 2014.

The Company commenced construction after obtaining required permits and approvals and has an anticipated opening date of June 2019.

¹ Chapter 23K gave the Commission the authority to issue up to three category 1 gaming licenses, one in each of Region A, B, and C as defined by the statute and one category 2 gaming license, which could be located anywhere in the Commonwealth. Chapter 23K required that the Commission award the category 2 license before awarding any of the category 1 licenses.

II. ALLEGATIONS OF MISCONDUCT ARISE IN 2018

On January 26, 2018, *The Wall Street Journal* (“WSJ”) published an article detailing numerous allegations of workplace sexual misconduct and sexual harassment by Steve Wynn involving subordinate employees of Wynn Resorts. Mr. Wynn, along with his now ex-wife, Elaine Wynn, was a co-founder of Wynn Resorts and, at the time of the WSJ article, was the CEO and Chairman of the Board of Directors of Wynn Resorts. On January 31, 2018, at a Commission public meeting, the Commission asked the IEB to investigate the allegations outlined in the WSJ article and report back to the Commission. Specifically, the Commission asked the IEB to focus on the following four areas:

1. A review of the suitability of individual qualifiers who potentially had knowledge of the allegations of sexual misconduct by Mr. Wynn upon employees, including a review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013;
2. A review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of any misconduct;
3. The Company’s response since the publication of the January 26, 2018 WSJ article regarding alleged misconduct; and
4. A review of the potential impact of the allegations upon the financial suitability of the Company.²

On February 6, 2018, shortly after the IEB began its investigation, Mr. Wynn stepped down as CEO and Chairman of the Company. Mr. Wynn’s attorneys notified the Commission that as of April 18, 2018, Mr. Wynn had fully divested his ownership interests in the Company. The Commission convened a hearing on April 27, 2018, to determine whether Mr. Wynn should remain designated as a qualifier on the Wynn MA, LLC license. After taking documentary evidence and oral testimony, the Commission, by written decision dated May 7, 2018, determined that Mr. Wynn was no longer a qualifier following the next scheduled annual shareholder’s meeting.

The IEB investigators traveled to six different states and interviewed over 100 individuals, including current and former employees of the Company with knowledge of the alleged sexual misconduct, victims of the alleged sexual misconduct, and certain former and current in-house and outside counsel for the Company who were involved in matters regarding the allegations of sexual misconduct. The IEB engaged a consultant to advise it on the Company’s handling of claims of alleged sexual harassment at Wynn MA, LLC and a consultant to review the Company’s financial suitability and business practices and the impact, if any, of the WSJ article on the Company’s financial suitability and business practices.

² IEB Report. At the January 31, 2018, Commission meeting, IEB Director Karen Wells advised the Commission that the role of the investigation was not to conduct a criminal investigation into sexual assault but rather to focus on addressing the four points listed above.

During the course of the IEB's investigation, there were further significant changes at the Company. The Board elevated Matthew Maddox, then President of the Company, to CEO and separated the positions of CEO and Chairman of the Board. Over the course of 2018, six of the nine members of the Board of Directors either resigned or did not stand for re-election and were replaced by Mr. Philip Satre, Mr. Maddox, Ms. Margaret (Dee Dee) Meyers, Ms. Betsy Atkins, Ms. Wendy Webb, and Mr. Richard Byrne. Effective August 3, 2018, Kimmarie Sinatra, Executive Vice President and General Counsel of the Company, resigned and was replaced by Ellen Whittemore, a Nevada attorney with many years of gaming regulatory experience.

In the fall of 2018, as the IEB was completing its investigation, Mr. Wynn filed suit against Wynn Resorts, Limited, the Commission, and Karen Wells, Director of the IEB, in both her official and individual capacities, alleging that the Company had improperly provided attorney-client privileged and other information to the IEB for use in its investigative report. The parties resolved the litigation by agreement on March 1, 2019, allowing the IEB to finalize its report on March 15, 2019.

The Commission held an adjudicatory proceeding on April 2, 3, and 4, 2019 ("adjudicatory hearing"). The documentary evidence submitted into the record as well as the oral testimony and briefing submitted by the parties form the record upon which the decision in this matter is based.

III. FINDINGS OF FACT

In reaching its decision, the Commission considered all facts presented in the IEB Report, the witness testimony, and the exhibits introduced at the hearing, a detailed list of which is set forth in Attachment A³ to this decision. The Commission adopts the stipulated facts as presented in the IEB's Report, which is incorporated by reference in this decision.⁴ The Commission finds all witnesses who testified at the adjudicatory hearing to be credible unless expressed specifically otherwise in this decision. We summarize below the salient facts as stipulated by the parties, supplemented where necessary by additional findings in this decision.⁵

The Company's Human Resources Policies

The Company has maintained a number of different human resources policies since its inception in 2004. Each is described in section V of this decision. However, it is notable at this juncture that each required that complaints of harassment be reported to the employee relations department and a thorough investigation be conducted.

2005

In July 2005, a manicurist at the newly opened Wynn Las Vegas reported to a supervisor that Steve Wynn had raped her and that she was pregnant by him. At the time, Mr. Wynn was

³ Wynn MA, LLC's Motion to Supplement the Record and Wynn MA, LLC's Second Motion to Supplement the Record are hereby allowed.

⁴ See Hearing Exhibit J: Letter regarding Wynn MA LLC's Designation of Non-Contested Facts dated March 28, 2019, and page 18 line 14 to page 19 line 19 Commission Hearing Transcript dated April 2, 2019.

⁵ Steve Wynn has consistently denied all allegations; however, because the Company failed to investigate the allegations and it was not the role of the IEB to conduct a criminal investigation into sexual assault, a full set of facts may never be developed.

the founder and CEO of Wynn Las Vegas as well as the newly opened Encore at Wynn. The supervisor told Marc Schorr of the allegations. Mr. Schorr (then-President and CEO of Wynn Las Vegas and COO of Wynn Resorts) personally met with the alleged victim and told her there would be an investigation. Within days, Mr. Wynn reached a settlement in the amount of \$7.5 million with the manicurist and she “resigned.” The settlement between Mr. Wynn and the manicurist and her husband was signed on July 22, 2005, and included a retraction, a non-disclosure provision, and a structured payment schedule.

Mr. Wynn and outside attorneys Frank Schreck and James Pisanelli, then of Schreck & Brignone PC, created Entity Y, a Limited Liability Company, and used Mr. Wynn’s personal funds to make the settlement payments structured over the course of ten years in order to conceal the source and reason for the payments made under the settlement.

In addition to Mr. Schorr, Arthur Nathan (then-Senior VP and Chief Human Resources Officer of Wynn Las Vegas) and Doreen Whennen (then-VP of Hotel Operations Wynn Las Vegas) knew of the rape allegation at or near the time it had been made. Outside counsel Mr. Schreck knew of the rape allegation. Outside counsel Mr. Pisanelli knew of the creation of Entity Y, and Attorney Gregory Kamer of Kamer, Zucker, Abbott LLP (“KZA”) knew of the settlement agreement.

Neither the Company’s outside counsel nor the executives with knowledge of the matter informed then Wynn Resorts General Counsel Attorney Marc Rubinstein. Instead, Mr. Rubinstein discovered an entry on an invoice after the settlement had been executed and questioned the entry. He was rebuffed by Mr. Schorr and thus sought separate advice from other outside counsel, Attorney Jerome Coben of Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Rubinstein pushed for details and was informed that Mr. Wynn engaged in consensual sexual activity with an employee, resulting in the \$7.5 million settlement. Mr. Coben and Mr. Rubinstein concluded that disclosure to the Board of Directors was not required. Mr. Rubinstein resigned in early 2006.

The Company did not document or investigate the allegation as required by the Company’s human resources policies. No one informed the Board of Directors of the allegation or the settlement.

2006

In 2006, a former cocktail server at Wynn Las Vegas made a complaint to Mr. Nathan that she had been “wrongfully engaged in a sexual relationship” with Mr. Wynn. Mr. Nathan (then-Chief Human Resources Officer Wynn Las Vegas) reported the allegation to Kevin Tourek (then-Vice President and General Counsel for Wynn Las Vegas).

Mr. Wynn reached a settlement in the amount of \$975,000 with the cocktail waitress and used his own funds to make the payment. Mr. Nathan notified the Company on December 1, 2006, of his resignation effective March 26, 2007. On December 7, 2006, outside counsel Mr. Barry Slotnick of Buchanan Ingersoll & Rooney, PC signed the settlement on behalf of Mr. Wynn. Similar to the 2005 settlement, it included a confidentiality provision, a release of claims against Mr. Wynn and the Company, a non-disparagement clause, and a no-admission clause.

Mr. Wynn, Mr. Nathan, and Mr. Tourek knew of the allegation of a wrongful sexual relationship. While there is evidence that Mr. Tourek intended to inform Mr. Schorr, it is unclear if this in fact occurred.

The Company did not document or investigate the allegation as required by the Company's human resources policies. No one informed the Board of Directors of the allegation.

2008

In 2008, an attorney for a previously terminated employee from the cocktail services department at Wynn Las Vegas sent a demand letter and a draft complaint to the Company alleging, among other things, that she had a previous "intimate relationship" with Mr. Wynn when she was his subordinate at Mirage Resorts.

Wynn Las Vegas and the complainant reached a settlement for the amount of \$700,000. The Company used corporate funds to pay the settlement.

Billing records from KZA indicate that attorneys Kamer, Scott Abbott, Slotnick, Tourek and Ms. Sinatra (then-Wynn Resorts General Counsel) were present at two meetings on this matter. Ms. Sinatra denied knowledge of the allegation, and participants at the meetings cannot confirm her presence at the entirety of the meetings.

Mr. Wynn and Mr. Tourek knew of the allegation and settlement. Outside counsel Abbot, Kamer, and Slotnick were aware of the allegation and the settlement.

The Company did not document or investigate the allegation. While the complainant had been terminated and the alleged misconduct occurred at a different establishment, the allegation against the then-CEO and Chair of the Board warranted further inquiry.

No one informed the Board of Directors of the allegation.

However, Mr. Tourek did enter the \$700,000 settlement on a quarterly disbursement memo statement to the Compliance Committee of the Board on April 28, 2009. He identified it as a legal settlement payable to the "vendor" G. Dallas Horton & Associates. Matthew Maddox (then-CFO of Wynn Las Vegas) asked about the entry and was told that Mr. Wynn and his then-wife, Elaine Wynn, wanted to help out a struggling employee. He did not pursue the matter further.

2009 – 2012

In April 2009, Elaine Wynn learned of the 2005 rape allegation as well as the related settlement. At that time, she and Mr. Wynn were in the beginning of a contentious divorce.

Ms. Wynn spoke with a number of individuals after learning about the allegations and settlement including: Mr. Wynn; her divorce attorney, Don Schiller; Mr. Nathan (by then former Senior VP and Chief Human Resources officer of Wynn Las Vegas); Doreen Whennen (by then former VP of Hotel Operations of Wynn Las Vegas); Attorney Schreck; and Russell Goldsmith (a board member from 2008-2012).

Ms. Wynn, at that time a member of the Board of Directors, also reported the 2005 allegation and settlement to Ms. Sinatra in her role as general counsel for Wynn Resorts and secretary for the Board of Directors. Ms. Sinatra did not make any disclosure to the Board of Directors at that time. Ms. Sinatra stated that she relied upon advice of outside counsel relative to the Company's obligation to disclose the 2005 allegation and settlement to regulators.⁶

Ms. Wynn did not directly report the 2005 allegation and settlement to the Board during this time period.

The Company did not document or investigate the 2005 allegation and settlement after Ms. Wynn reported them to Ms. Sinatra as required by the Company's human resources policies.

2013

In January 2013, Wynn MA, LLC filed its RFA-1 application with the Commission and Wynn Resorts, Limited filed an RFA-1 application as the parent company/qualifier of Wynn MA, LLC.

Various individuals, including but not limited to Mr. Wynn, Ms. Wynn, and Ms. Sinatra, as well as the then members of the Wynn Resorts Board of Directors, filed RFA-1 applications as individual qualifiers based upon their roles in Wynn Resorts, Limited.

No one disclosed the above described allegations or settlements or the use of Entity Y as the vehicle for payment of the settlement in 2005 in the Wynn MA, LLC, Wynn Resorts, Limited, or any of the individual RFA-1 applications.

Mr. Wynn did not disclose the 2005 allegation and settlement, the 2006 allegation and settlement, or the 2008 allegation and settlement on his individual RFA-1 application.

Ms. Wynn did not disclose the 2005 allegation and settlement on her individual RFA-1 application.

The Commission conducted a suitability hearing for Wynn MA, LLC and the associated corporate and individual qualifiers on December 16, 2013. On December 27, 2013, the Commission deemed the applicant and all associated corporate and individual qualifiers suitable.

On December 31, 2013, Wynn MA, LLC submitted its RFA-2 application to the Commission for a proposed casino in Everett, Massachusetts.

2014

In July 2014, during the course of a mediation session of an EEOC charge alleging certain other employment claims filed by a terminated cocktail server at Wynn Las Vegas, the cocktail server alleged to the Company's outside counsel that Mr. Wynn raped her in 2005. The EEOC charge made no allegations regarding sexual misconduct by Mr. Wynn and neither Mr. Wynn nor his counsel was present at this mediation.

⁶ Such statement and reliance, however, does not address her or the Company's failure to ensure compliance with the Company's human resources policies mandating an investigation of such an allegation. Ms. Sinatra disputes that she received this information from Ms. Wynn in 2009.

The Company's outside counsel, Mr. Abbott, drafted a memo and emailed it to Mr. Tourek (then-General Counsel for Wynn Las Vegas) summarizing the allegation. Mr. Abbott also spoke with Mr. Tourek and Maurice Wooden (then-President of Wynn Las Vegas) about the allegation.

Mr. Tourek forwarded the memo by email to outside attorney Don Campbell; Mr. Wynn alleged that Mr. Campbell represented him individually rather than the Company.

Mr. Campbell emailed the memo to Ms. Sinatra (then-General Counsel of Wynn Resorts) to her email address at the Company.

The Company reached a settlement in the amount of \$9,000 with the former employee and paid the settlement using Company funds.

The Company did not document or investigate the allegation of rape as required by the Company's human resources policies.

No one informed the Board of Directors of the allegation or settlement.

On September 17, 2014, the Commission awarded the Region A license to Wynn MA, LLC.

No one informed the Commission of the allegation of rape or settlement prior to the award of the Region A license to the Company.

2014-2015: Spa Complaints

Over a six month period commencing in 2014 and carrying into 2015, two massage therapists complained three times of alleged inappropriate conduct by Mr. Wynn.

The first allegation was that Mr. Wynn was inappropriate in his wishes on covering himself during a massage. The spa director who initially received the complaint forwarded the matter to Blake Feeny (then-Executive Director of Spa Operations, Wynn Las Vegas) who, in turn, notified Brian Gullbrants (then-Executive VP and General Manager of Wynn Las Vegas). Mr. Gullbrants then notified Mr. Wooden (then-President of Wynn Las Vegas).

There is no evidence any investigation of the allegation occurred.

Within months, the same massage therapist lodged another complaint concerning Mr. Wynn's behavior in asking for a "sensual massage" during a couple's massage with his wife. The director again notified Mr. Gullbrants, who then notified Mr. Wooden.

Mr. Wooden reported this complaint to Mr. Maddox (then-President of Wynn Resorts). Mr. Maddox instructed Mr. Wooden to tell Mr. Wynn to "knock it off." Mr. Maddox did not document the conversation or instruct Mr. Wooden to conduct an investigation.

At the end of this approximately six month period, the spa director received another complaint from a massage therapist concerning Mr. Wynn's inappropriate behavior. The allegation concerned another instance of Mr. Wynn insisting on inappropriate draping during a massage that made the therapist uncomfortable.

The then-Director of the Spa felt that this allegation was ‘the last straw’ and reported it to Mr. Gullbrants, but did not document it. Mr. Gullbrants forwarded the allegation to Mr. Wooden.

The Company did not document or investigate these complaints as required by the Company’s human resources policies.

Ultimately, Mr. Wynn reached a settlement with the latter massage therapist. Neither the Company nor the IEB are aware of the details of the settlement aside from a provision releasing the Company from all claims.

2016

Okada Litigation⁷

On April 24, 2015, Ms. Wynn failed to gain re-election to the Board.

On March 28, 2016, Ms. Wynn, acting as a cross-claimant in the *Okada* litigation, filed a Fifth Amended Cross-claim. The original complaint had been filed in 2012. The cross-claim alleged that Mr. Wynn had engaged in “reckless risk-taking behavior” and made reference to the existence of a prior settlement in 2005.

The Board of Directors learned of the cross-claim and the Independent Board members then became aware that the conduct referenced in the cross-claim was of a sexual nature. Ms. Sinatra engaged outside counsel Jonathan Layne from Gibson Dunn Crutcher LLP (“Gibson Dunn”) to provide guidance on the cross-claim. Mr. Layne asked Ms. Sinatra about the 2005 settlement reference and she informed him that it was essentially “old and cold” and a “one-off.” She did not tell him or the Independent Directors about any other allegations or settlements.

The Independent Directors engaged Attorney Barry Langberg to assess a defamation action against Ms. Wynn. Mr. Langberg interviewed Mr. Wynn and Mr. Schreck to complete his defamation analysis. No one conducted an investigation. The Independent Directors considered the information initially presented to them and ultimately concluded that no further action was required.

Mr. Maddox learned of the 2005 settlement shortly after the cross-claim was filed but did not pursue the matter beyond obtaining Ms. Sinatra’s summary of the facts.

However, as a result of the allegation, the Independent Directors adopted a Communications Protocol applicable to all executive managers. On August 2, 2016, then-General Counsel Sinatra disseminated the protocol via email to all relevant managers, including then-President Mr. Maddox, and copied the Board members.

On March 24, 2016, four days prior to the filing of the amended cross-claim, Mr. Tourek spoke with Chair A.G. Burnett of the Nevada Gaming Control Board about the amended cross-claim. No one contacted the IEB or anyone at the Commission about the amended cross-claim.

⁷ See IEB Report at p. 113.

Irani Allegations

On April 6, 2016, the Company and the Compliance Committee members learned from an article in the *Los Angeles Times* the day before that one of the Board Members, Dr. Ray Irani, had been named in a civil complaint filed in California alleging serious allegations, including but not limited to allegations of human trafficking. At the time, Dr. Irani was a Board member and qualifier in the Wynn MA, LLC gaming license.

The Board did not conduct an investigation of the allegations in the complaint.

The Company notified the Nevada Gaming Control Board of the complaint against Dr. Irani.

Neither the Company nor Dr. Irani notified the IEB or anyone at the Commission about the serious allegations made against Dr. Irani.

Additional Allegation of Sexual Harassment

On October 27, 2016, Cindy Mitchum, Mr. Wynn's executive assistant, received an email from a former employee including a five page attachment. Ms. Mitchum forwarded the email to Ms. Sinatra and Ms. Stacie Michaels (then-General Counsel for Wynn Las Vegas).

Ms. Michaels spoke with Ms. Sinatra, who informed her that she would handle it. Within days, Ms. Sinatra met with Mr. Wynn and began reading the attachment, which included a series of allegations including those of sexual harassment and creating a hostile work environment.

No one conducted an investigation of the allegations or informed the Board of Directors.

2017

In 2017, numerous Company Board Members, executives, and outside counsel submitted to depositions as part of the discovery in the *Okada* litigation.

During the course of that discovery, the Company learned of the 2005 allegation of rape and settlement. Nevertheless, the Company took no steps to disclose this information to the Board of Directors as required by the Company's Communications Protocol adopted by the Board of Directors in 2016.

The Company did not document or investigate the 2005 allegation and settlement as required by the Company's human resources policies.

The Company did not disclose this information to the Commission, nor did the Company seek an order from the court authorizing any such disclosure to regulators.

2018

In December 2017 into January 2018, the Company learned that the WSJ was working on a story about allegations of wrongdoing by Mr. Wynn. No one at the Company notified the Commission at that time.

On January 26, 2018, The WSJ published an article containing numerous allegations of sexual misconduct by Mr. Wynn. The Company notified the Commission only upon the article's publication.

The Company supported Mr. Wynn and issued a message to all Company employees advising them of its support. The Company also held various meetings with Company employees, including meetings held by Mr. Wynn, to rally support for him.

The Board formed a special committee to investigate the allegations in the WSJ article. On February 2, 2018, Ms. Sinatra told the IEB that the committee had hired the law firm of O'Melveny & Meyers, LLP ("O'Melveny") to conduct the investigation.

On February 6, 2018, Mr. Wynn resigned from the Company. The Board named Mr. Maddox acting CEO of the Company.

On February 12, 2018, the Board terminated the engagement with O'Melveny and instead hired the law firm of Gibson Dunn to conduct the investigation.⁸

At some point during this time, Mr. Maddox and Ms. Sinatra approved the request of James Stern, (then-Executive Vice President of Corporate Security and Investigations) to conduct undercover surveillance of the named source in the WSJ article. They ceased those efforts after the IEB expressed concern over the possible chilling effect on witnesses.

By May 2018, Mr. Wynn had separated from the Company and the Commission designated him as a qualifier under the statute.

Over the coming months, six members of the Board of Directors either resigned or did not stand for re-election.

On July 18 and August 3, 2018, Gibson Dunn briefed the Company's Board on its investigative findings. The Board adopted most of those recommendations. Notably, in connection with Mr. Wooden, aside from Admiral Jay Johnson, the Board elected not to follow Gibson Dunn's recommendation to terminate Mr. Wooden and instead placed Mr. Wooden on probation. In December 2018, Mr. Wooden resigned.

Over the course of the special committee review and the IEB investigation, no less than nine additional allegations of inappropriate behavior/sexual misconduct by Mr. Wynn relating to current or past employees of the Company that went without required investigation were discovered.⁹

In November 2018, Mr. Wynn filed suit in Nevada against the Commission and the IEB's Director alleging that the Company had improperly provided attorney-client privileged and other information to the IEB for use in its investigative report. That litigation was resolved by agreement of the parties in March 2019.

⁸ The Commission notes that Gibson Dunn had a long-standing relationship with the Company and had counseled the Board earlier as to whether the Company should investigate the 2005 allegation.

⁹ The IEB's investigation confirmed the existence of more than two dozen women alleged to have been subjected to some form of sexual misconduct by Mr. Wynn.

2019

On January 5, 2019, the Nevada Gaming Control Board announced the filing of a complaint against the Company, fined the Company \$20 million, and allowed the Company to keep its Nevada gaming licenses.

On March 15, 2019, the IEB issued its Investigative Report Regarding the Ongoing Suitability of Wynn MA, LLC.

On April 2, 3 and 4, 2019, the Commission held an adjudicatory hearing and took documentary and oral testimony on whether Wynn MA, LLC and certain of its qualifiers remains suitable to hold a gaming license in Massachusetts.

IV. ANALYSIS

A. LEGAL AUTHORITY AND SUITABILITY STANDARDS

1. AUTHORITY

The powers and authority of the Commission are well established via statute, regulation, and case law. A ‘paramount policy objective’ of the Gaming Act is “ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme.” G.L. c. 23K, § 1(1). “Gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability.” *Id.* at § 1(3). “Any license awarded by the [C]ommission shall be a revocable privilege and may be conditioned, suspended, or revoked upon: (i) a breach of the conditions of licensure, including failure to complete any phase of construction of the gaming establishment or any promises made to the [C]ommonwealth in return for receiving a gaming license; (ii) any civil or criminal violations of the laws of the [C]ommonwealth or other jurisdictions; or (iii) a finding by the [C]ommission that a gaming licensee is unsuitable to operate a gaming establishment or perform the duties of their licensed position.” *Id.* at § 1(9). “[T]he power and authority granted to the [C]ommission shall be construed as broadly as necessary for the implementation, administration, and enforcement of [the Gaming Act].” *Id.* at § 1(10).

The Commission is broadly granted “all powers necessary or convenient to carry out and effectuate its purposes.” *Id.* at § 4. This grant includes, but is not limited to, the power to “assure that licenses shall not be issued to, or held by, and that there shall be no material involvement directly or indirectly with, a gaming operation or the ownership thereof, by unqualified, disqualified or unsuitable persons or by persons whose operations are conducted in a manner not conforming with [the Gaming Act].” *Id.* at § 4(9). It also includes the power to “deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or fine a person licensed, registered, found suitable, or approved for any cause that the [C]ommission deems reasonable.” *Id.* at § 4 (15). The Commission may also “levy and collect assessments, fees, and fines, and impose penalties and sanctions for a violation of this chapter or any regulations promulgated by the [C]ommission.” *Id.* at § 4(25).

“When the Legislature delegates to an administrative agency a broad grant of authority to implement a program of reform or social welfare, the administrative agency generally has a wide range of discretion in establishing the parameters of its authority pursuant to the enabling legislation. See Levy v. Bd. of Registration & Discipline in Med., 378 Mass. 519, 525 (1979). An “agency’s powers are shaped by its organic statute taken as a whole and need not necessarily be traced to specific words.” Id. quoting Com. v. Cerveney, 373 Mass. 345, 354 (1977). The powers of the Commission have been described as both “spacious” and “of remarkable breadth of discretion.” Caesars Massachusetts Mgmt. Co., LLC v. Crosby, 778 F.3d 327, 335, 336 (1st Cir. 2015).

2. SUITABILITY

The Commission established a two phase process for the application of a prospective gaming licensee. The first phase of the application, or the RFA-1, involved a determination of suitability by applicants and their ‘qualifiers.’ See 205 CMR 110. Qualifiers include those individuals with a financial interest in a gaming license or the business of a gaming licensee as well as corporate officers, directors and shareholders holding more than 5% of the stock. See G.L. c. 23K, §§ 2, 14 and 205 CMR 116.02. The Commission’s review of suitability is ongoing. See G.L. c. 23K, § 1(3) (“gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability....”); see also 205 CMR 115.01(4) (“Once issued a positive determination of suitability, the gaming licensee and all qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 115.01(1) and (2).”).

The various criteria for the analysis of a gaming licensee and its qualifiers’ suitability are detailed in G.L. c. 23K, §§ 12, 14 and 16.

G.L. c. 23K, § 12(a) establishes that in considering an applicant for a gaming license, the Commission reviews, in relevant part:

- (1) the integrity, honesty, good character and reputation of the applicant;
- (2) the financial stability, integrity and background of the applicant; [and]
- (3) the business practices and the business ability of the applicant to establish and maintain a successful gaming establishment.

Section 16(a), of G.L. c. 23K in turn states that:

The [C]ommission shall deny an application for a gaming license or a license for a key gaming employee issued under this chapter, if the applicant: (i) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; (ii) submitted an application for a license under this chapter that contains false or misleading information; (iii) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter; or (iv) has affiliates or close associates that would not qualify for a license or whose

relationship with the applicant may pose an injurious threat to the interests of the [C]ommonwealth in awarding a gaming license to the applicant.

The Commission also examines:

whether the applicant is disqualified from receiving a license under [G.L. c. 23K, § 16]; provided, however, that in considering the rehabilitation of an applicant for a gaming license, the [C]ommission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity and general fitness as such to warrant belief by the [C]ommission that the applicant will act honestly, fairly, soundly and efficiently as a gaming licensee.

Id. at § 7.

Any suitability determination is based on an evaluation of the combination of numerous criteria as established via statute and regulation. Further, suitability determinations examine both the individual suitability of qualifiers as well as the suitability of the entity holding the license. Given the interrelationship of §§ 12 and 16, as explained above, the criteria in both sections can equally apply to evaluation of an entity or an individual. Stated plainly, suitability assesses the integrity, good character, financial ability, and business practices of an applicant. In terms of suitability, the burden is on the applicant (individual or entity) to establish each criterion by clear and convincing evidence. See G.L. c. 23K, § 13(a), 205 CMR 115.01(2). “Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’, and ‘full, clear and decisive.’” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (internal citations omitted).

The importance of a suitability determination cannot be understated in light of the paramount policy objective of G.L. c. 23K concerning the integrity of the licensing process. The rationale for such an emphasis on integrity stems from the historical association of gaming with organized crime, dishonesty, and vice and the corresponding lack of faith brought along with those associations that the public may acquire relative to the fairness of the actual casino games, the honest collection of revenues and payment of taxes by the property owners and operators, and the overall unsavory reputation that may hover over such an operation – all of which put at risk not only the interests of the state, but also the welfare and well-being of casino patrons and employees. The integrity component of the suitability evaluation thus examines the honesty, good character, and reputation of an applicant.

It is important to clarify the manner in which one’s integrity, honesty, good character, and reputation are evaluated. As the Commission has noted in past decisions, the New Jersey Casino Control Commission has thus far best described the standard for evaluating the good character, honesty, and integrity of an individual applicant. In In re Bally’s Casino Application, 10 N.J.A.R 356, 393 (1981), the New Jersey Casino Control Commission stated:

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First "character" is an elusive concept which defies precise definition. Next we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a [person's] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.

In addition to 'good character,' the Gaming Act places a particular emphasis on honesty. The Gaming Act states:

No applicant, licensee, registrant or person required to be qualified under this chapter shall willfully withhold information from, or knowingly give false or misleading information to, the [C]ommission. If the [C]ommission determines that an applicant, or a close associate of an applicant, has willfully provided false or misleading information, such applicant shall not be eligible to receive a license under this chapter. Any licensee or other person required to be qualified for licensure under this chapter who willfully provides false or misleading information shall have its license conditioned, suspended or revoked by the [C]ommission.

G.L. c. 23K, § 13(c); see also 205 CMR 112.02(3) and 112.03(1). The evaluation of financial stability of an applicant examines a variety of factors, including: the ability to maintain payroll, pay winning wagers, meet ongoing operational expenses, pay taxes, fund payments imposed by G.L. c. 23K, make necessary capital and maintenance expenditures, and handle ongoing debt obligations. See 205 CMR 117.01(2)(a-g). Similarly, the business practices of an applicant, while having some relation to financial stability, are broader, encompassing a more holistic view of the applicant. Such an examination would include factors such as corporate governance, including adherence to adopted policies and procedures.

In examining the suitability of both the entity and the individual qualifiers, it is important to recognize that the corporate entity itself is made up of individuals and has no independent character or morality standing alone. See Merrimack Coll. v. KPMG LLP, 480 Mass. 614, 628 (2018) ("Where the plaintiff is an organization that can only act through its employees, its moral responsibility is measured by the conduct of those who lead the organization. Thus, where the plaintiff is a corporation, as here, we look to the conduct of senior management—that is, the officers primarily responsible for managing the corporation, the directors, and the controlling shareholders, if any."); Com v. Beneficial Finance Co., 360 Mass. 188, 265 (1971) ("Since a corporation is a legal fiction, comprised only of individuals, it has no existence separate and distinct from those whom it has clothed with authority and commissioned to act for it whether

such individuals are directors, officers, shareholders or employees.”). Given that a corporation is viewed as an amalgamation of individuals, it is critical to determine whether it can “remove a stain from [its] image by removing the persons responsible for the misdeeds.” Bally’s, 10 N.J.A.R. at 403; see also, Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den., 405 U.S. 1065 (1972).¹⁰

As noted above, during the RFA-1 process, the Company and its associated qualifiers bore the burden of establishing their suitability by clear and convincing evidence and the Company and its associated qualifiers had an ongoing obligation to maintain that standard. “Once issued a positive determination of suitability, the gaming licensee and all qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 115.01(1) and (2).” See 205 CMR 115.01(4). This continuing duty includes a duty to provide any assistance or information required by the Commission and to cooperate in any Commission investigation. See G.L. c. 23K, § 13(b).

In contrast, “[i]n the case of an adverse action taken against a gaming licensee or qualifier for failure to maintain their suitability pursuant to 205 CMR 115.01(4) the [IEB] [] shall have the affirmative obligation to establish by substantial evidence the lack of clear and convincing evidence that the gaming licensee or qualifier remains suitable.” See 205 CMR 101.01(9)(c).

Substantial evidence is defined by M.G.L. c. 30A § 1(6) as “such evidence as a reasonable mind might accept as adequate to support a conclusion.” “It is a standard of review ‘highly deferential to the agency’, which requires (as G.L. c. 30A, § 14(7) mandates) according ‘due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.’” Hotchkiss v. State Racing Comm’n, 45 Mass. App. Ct. 684, 695–96 (1998), quoting, Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). Substantial evidence has been explained as “virtually synonymous with proof by a fair preponderance of the evidence.” See 19 Mass. Prac., Evidence § 102.9 (3d ed.). The Court has held that “[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings.” Craven v. State Ethics Com’n, 390 Mass. 191, 200 (1983). However, Courts have used the terms interchangeably. See, e.g., Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 228 (2010) (“Under G.L. c. 30A, § 14(7), we review an agency’s decision to determine whether it was not supported by substantial evidence, was arbitrary or capricious, or was otherwise based on an error of law.”); School Committee of Brookline v. Bureau of Special Educ. Appeals, 389 Mass. 705, 717-718 (1983) (using the standards interchangeably). In any event, this distinction is of no import in this case as we would reach the same result in each of the matters now before us whether analyzing the applicable evidence under the preponderance standard or the substantial evidence standard.

¹⁰ While the Commission finds that Trap Rock provides useful guidance in determining entity suitability, it does not adopt Trap Rock as the determinative standard in Massachusetts.

B. FINDINGS

1. THERE IS NO SUBSTANTIAL EVIDENCE THAT WYNN RESORTS, LIMITED, WYNN MA, LLC, OR ANY OF ITS ASSOCIATED QUALIFIERS WILLFULLY PROVIDED FALSE OR MISLEADING INFORMATION TO THE COMMISSION DURING THE RFA-1 REVIEW PROCESS THROUGH TO THE AWARD OF THE REGION A GAMING LICENSE.

The application for a gaming license consisted of two parts. See 205 CMR 110.01. The first, called the Phase 1 (or RFA-1) application, essentially focused on the qualifications and suitability of the applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, § 12(a) and 205 CMR 115.00 through 117.00. In this case, the applicant was Wynn MA, LLC and the qualifiers included Wynn Resorts, Limited, Steve Wynn, Matthew Maddox, Kimmarie Sinatra, Elaine Wynn, and the other members of the Board of Directors at the time. Each entity submitted a *Business Entity Disclosure Form* (“BED”). See 205 CMR 11.02. Each individual submitted a *Multi-jurisdictional Personal History Disclosure Form* (“MJPHD”) and a *Massachusetts Supplemental Form* (“MA Supp.”). See 205 CMR 11.03 and 11.04. At the time, the BED and MJPHD were in standard use in the gaming industry nationwide. The applicant and all qualifiers submitted all of the required forms and subjected themselves to an investigation by the IEB as required. On December 16, 2013, the Commission conducted a suitability hearing on the applicant and its qualifiers. On December 27, 2013, the Commission issued a positive determination of suitability for the applicant and all of its qualifiers.

The second part of the licensing process is known as the Phase 2 (or RFA-2) application. This process focused on the site, design, operation, financial strength, mitigation, and other attributes of, or related to, the proposed gaming facility itself. See generally 205 CMR 118.00 and 119.00. In December 2013, the applicant, Wynn MA, LLC, submitted an RFA-2 application to the Commission for consideration.

The Company did not disclose in any way during the application process the information about the allegations of sexual misconduct or settlement agreements. The evidence establishes that, at that point, Mr. Wynn was aware of all of the allegations and settlements, and Ms. Wynn and Ms. Sinatra were aware of at least the existence of the 2005 settlement, if not all of its details.

To ensure the integrity of the licensing process, G.L. c. 23K, § 13(c) provides, in pertinent part, as it applies to the completion of the licensing applications and other requested information:

If the [C]ommission determines that an applicant, or a close associate of an applicant, has willfully provided false or misleading information, such applicant shall not be eligible to receive a license under this chapter.

After a careful review of the record in this matter, the Commission concludes that there is no substantial evidence to support a finding that Wynn MA, LLC, Wynn Resorts, Limited, or any of its associated qualifiers willfully provided false or misleading information to the Commission at any time during the RFA-1 licensing process.

None of the applications contained any questions that specifically required the disclosure of information related to the allegations, settlements, or other evidence of wrongdoing at issue here. While matters of harassment and other unlawful behavior in the workplace, including sexual relations between a superior and a subordinate where there exists an inherent risk of abuse of power, have long been governed by specific legal principles and workplace policies, they may not have been appropriately focused upon in gaming licensing reviews in any jurisdiction at the time the suitability investigations into the Company and Mr. Wynn were conducted in 2013. Accordingly, the applications did not specifically require, for example, disclosure of complaints or settlements related to harassment of any kind in the workplace. The fact that none of the information giving rise to this matter was disclosed via the licensing applications does not support a conclusion that the Commission was willfully provided false or misleading information.

A review of the Company's internal process for completing and submitting the forms evidences that, with the exception of Mr. Wynn, where Shannon Nadeau drafted the form and forwarded it to Ms. Mitchum for review, each qualifier was responsible for completing the necessary form which he or she then forwarded to Ms. Nadeau, identified at that time as the Director of Compliance. There is nothing in the record that anyone at the Company conducted a comprehensive review of those forms.

However, there was one instance which bears discussion. In addition to submission of the BED forms, MJPHD forms, and MA Supp. Forms, the IEB and its consultant team from Michael & Carroll further inquired of the applicants via email questions, requests for document productions, in-person interviews, and other similar means. Notably, on May 28, 2013, Bernie Murphy emailed the Company and certain members of the IEB clarifying the information sought to complete the suitability review.¹¹ See Exhibit E(44). Specifically, Mr. Murphy directed his message to Ms. Sinatra at her Company email address, with a copy to Ms. Nadeau¹² and Jacqui Krum (then-General Counsel of Wynn Development),¹³ among others. This message was sent to Ms. Sinatra in her capacity as general counsel of Wynn Resorts.¹⁴ Towards the end of a multi-faceted message, Mr. Murphy wrote:

We will need, again to the extent not already provided, any and all internal documents dealing with what I will refer to as the high profile issues that Mr. Wynn and WR are dealing or have dealt with in the past. These matters may involve litigation and personal relationships as well as business matters...we believe that any, or all, of them may be viewed as suitability related issues (emphasis supplied).

¹¹ Bernie Murphy was a member of the consultant team from Michael & Carroll that assisted the Commission in conducting the RFA-1 investigations for applicants for gaming licenses.

¹² Ms. Nadeau was designated as the Director of Compliance with the Company at the time the RFA-1 applications were prepared. She was identified as the person who handled the application process, and all qualifiers were offered some assistance from her.

¹³ Ms. Krum testified at the adjudicatory hearing that she did not have any involvement in the completion of the RFA-1 applications. Regardless, there is no evidence suggesting that she had any awareness as to the past allegations and settlements at the time the applications were being prepared and submitted.

¹⁴ When a person submits a MJPHD form, they are answering on their own behalf as an individual qualifier. When asked questions in their official capacity, they are answering on behalf of the entity for whom they are employed. In the case of Exhibit E(44), the Commission finds no credible evidence that Ms. Sinatra was being addressed in any way other than her official capacity.

This request certainly provided an opening for Ms. Sinatra to disclose what she and others at the Company knew about the allegations and settlements. The Company contends that Ms. Sinatra, when she directed Ms. Nadeau to compile those materials in response to the request, properly interpreted that request to focus on the *Okada* litigation and several other matters. The Commission finds this to be an overly narrow interpretation; nonetheless, this does not constitute substantial evidence that the Company willfully withheld or misled the Commission. At the time, the industry and investigators may have been most vigilant for associations with individuals connected to organized crime, individuals who had spotted backgrounds, or individuals who were of questionable character. Accordingly, though we are troubled that information pertaining to the allegations and settlements which was known at the time was not provided at that juncture, standing alone, we cannot conclude that this failure constitutes substantial evidence of a willful provision of false or misleading information in accordance with G.L. c. 23K, § 13(c).

However, the lack of substantial evidence of a willful act by the Company does not retire the central concern that it failed to disclose this information to the Commission. While there may not have been a direct question or specific statutory provision requiring that this type of potentially derogatory information be provided to the Commission, transparency and self-reporting with the regulator has been a necessary hallmark of the regulatory landscape in gaming for some time. This was readily acknowledged by the Company's personnel during the suitability process and by numerous other witnesses interviewed as part of the IEB investigation in this matter. Therefore, it is difficult to fathom why the existence of the allegations and settlements was not disclosed to the Commission in 2013 and 2014 during the RFA-1 and RFA-2 reviews.¹⁵ It is arguably understandable why there would be a preference on the part of the Company not to publicly disclose the existence of the settlements, particularly if they believed them to be based on false allegations. It strains the conscience, though, to understand why they were not disclosed to the IEB, particularly if the Company was confident that the allegations were false. See G.L. c. 23K, § 9(b) and G.L. c. 4, § 7(26).

One of the troublesome undercurrents driving this matter is that disclosure of information was often withheld reportedly on the advice of legal counsel, both in-house and outside. All persons involved should have known better. This serves as a prime example of why it is important to ensure that an attorney is not conflicted by representation of multiple clients in the same matter. In the situation now before us, the interests of Mr. Wynn and the Company were clearly not always aligned. While it may have been in the Company's interests to disclose the existence of the allegations and settlements to the Commission, it was arguably not in Mr. Wynn's personal interest to do so. One needs look no further than the cleansing process that took place in the Company's executive ranks after the publication of the WSJ article to

¹⁵ The 2014 Abbott memo is dated June 27, 2014. The vote to award the Category 1 license in Region A to Wynn MA, LLC took place on September 16, 2014. Ms. Sinatra, who was intimately involved with the licensing process, denied being aware of the allegations contained in the Abbott memo despite being forwarded a copy to her Company email address and having responded to that email. The Commission notes that the IEB did not receive this email chain to or from Ms. Sinatra until September 28, 2018, after her departure, due to an e-discovery issue, as explained by the Company. The Commission is inclined to conclude that her denial was motivated by self-preservation given the proximity of the issuance of the memo to the licensing decision. The Commission found nothing in the record to support Sinatra's denial and was unable to elicit further explanation from her given that she declined to appear at the hearing despite receiving a subpoena and declined the Commission's follow-up request to appear following the conclusion of the adjudicatory hearing.

understand this divergence in interests. Though there appear to be blurred lines as to who represented whom, the same attorneys seem to be representing both parties at times and ultimately advising that certain of the allegations and settlements need not be disclosed to regulators. Had separate counsel been in place for each party, it is easy to envision that a different result may have been achieved.

Not only were the allegations and settlements not voluntarily disclosed, but in some instances, affirmative steps were taken which allowed Mr. Wynn to complete the forms without disclosure. The creation of Entity Y, in particular, stands out as a prime example of a concerted effort to ensure that the 2005 settlement would not be discovered by, among others, regulators. Question 23 of the MJPHD form requires disclosure of any “partnership, corporation, or any other business in which you have held an ownership interest of 5% or more . . .” Since Mr. Wynn was not listed as an owner of this entity and there is no substantial evidence that he possessed any type of direct interest in it, he was not expressly required to disclose its existence on the MJPHD form. Similarly, he did not have to disclose the payments being made through Entity Y on the MJPHD as outstanding debts because he was not directly associated with the entity. Notwithstanding that this was accomplished via a bit of cunning lawyering, the Commission cannot tolerate concealment of important information in the future. It is critical that the Commission promptly be made aware of all potentially derogatory information concerning the gaming licensees and qualifiers, particularly where self-disclosure is critical to the regulatory scheme. In this case, it appears that the blurred lines of representation led to the provision of ethically questionable advice, which ultimately led to the concealment of the information currently at issue.¹⁶

Because no specific questions were asked eliciting information relative to the allegations and settlements of wrongdoing and the Company relied upon conflicted legal advice¹⁷ regarding its duty to disclose the information, we find a lack of substantial evidence that Wynn Resorts, Wynn MA, LLC, or any of its associated qualifiers or close associates willfully provided false or misleading information to the Commission.

2. THERE IS NO SUBSTANTIAL EVIDENCE THAT WYNN RESORTS, LIMITED, WYNN MA, LLC, OR ANY OF ITS ASSOCIATED QUALIFIERS OR CLOSE ASSOCIATES WILLFULLY PROVIDED FALSE OR MISLEADING INFORMATION TO THE COMMISSION AFTER THE AWARD OF THE REGION A GAMING LICENSE.

A similar analysis applies relative to whether the Company or any of its qualifiers or close associates willfully provided false or misleading information to the Commission after

¹⁶ The Company is implementing new guidelines requiring a written conflict analysis by outside counsel prior to engagement. The Company also should consider creating and maintaining its own internal policies as to the retention of outside counsel to further guard against any potential conflicts of interests.

¹⁷ For example, Ms. Sinatra told IEB investigators that she was advised by Mr. Schreck that the 2005 matter had been properly handled and that she did not need to take further action. See IEB Report at p. 83. Further, Mr. Nathan told Ms. Wynn in 2009, a conversation which she memorialized in writing, that he thought the 2005 matter was serious enough to be brought to the Board of Directors, but was overruled by Mr. Schreck and Mr. Slotnick, who said it would create undue damage to the Company. See IEB Report at p. 49. Mr. Schreck denied to investigators that he ever offered advice relative to corporate governance or disclosure issues.

receiving the gaming license in 2014. Transparency with the Commission by the Company, including the disclosure of potentially derogatory information, is critical to ensure that the public may be confident that the gaming establishment is being operated by suitable parties. As stated previously, G.L. c. 23K, § 13(c) provides, in pertinent part:

Any licensee or other person required to be qualified for licensure under this chapter who willfully provides false or misleading information shall have its license conditioned, suspended or revoked by the commission.

There is no substantial evidence that the Company or any qualifier or close associate willfully provided false or misleading information to the Commission relative to the existence of the allegations and settlements. There is no evidence that any specific inquiry that should have elicited the disclosure of such information was ever made. There is a distinction to be made between a failure to disclose and the provision of false or misleading information. While the Commission finds that there was a failure to disclose, as described below, there is nothing in the record that evidences the willful provision of false or misleading information.

Having determined that there is no substantial evidence that Wynn Resorts, Wynn MA, LLC, or any of its associated qualifiers or close associates willfully provided false or misleading information to the Commission, the Commission next turns to a review of the previously qualified individuals whose suitability after the award of the license is put into question by these events.

3. WHERE THE RECORD DOES NOT ESTABLISH SUBSTANTIAL EVIDENCE TO DISTURB THE PREVIOUSLY ISSUED SUITABILITY FINDINGS FOR MATTHEW MADDOX, ELAINE WYNN, AND ELIZABETH PATRICIA MULROY, THEIR PRIOR POSITIVE DETERMINATIONS OF SUITABILITY STAND.

Where the Commission has already deemed suitable Wynn MA, LLC and its previously existing qualifiers, the issue now is whether there exists substantial evidence on the record before us to warrant disturbing those findings. See *Alsabti v. Board of Registration In Medicine*, 404 Mass. 547, 554 (1989) (“a state of things once proved to exist may generally be found to continue.”) In order to disturb those prior findings, the Commission must find that the record establishes substantial evidence of a lack of suitability by clear and convincing evidence. See 205 CMR 101.01(9)(c). Absent that finding, the prior determinations must stand. The evidentiary burden has not shifted to the Company and the Commission’s examination remains fixed on the information presented by the IEB.¹⁸ Notably, there is a slightly different approach when it comes to determining whether the Company or any qualifier has violated any statutory provision, regulation, or condition of its gaming license. In that case, the Commission must simply determine whether there is substantial evidence of such a violation. See 205 CMR 101.01(9)(b). This is wholly apart from the Commission’s authority to “fine a person licensed,

¹⁸ The exception to this statement concerns the new individual qualifiers who, as noted in the legal standards cited above, bear the evidentiary burden of demonstrating their suitability by clear and convincing evidence.

registered, found suitable or approved for any cause that the commission deems reasonable.” G.L. c. 23K, § 4(15)¹⁹

A. MATTHEW MADDOX

The most challenging analysis presented in this matter concerned the status of Matthew Maddox, CEO of Wynn Resorts, Limited, the parent company of the Massachusetts gaming license holder. One of the Company’s primary arguments throughout this hearing process has been, in sum, that since the Company has been completely transformed and everyone with knowledge of the allegations and settlements who failed to take action or took inappropriate action is no longer with the Company, the Company remains suitable to hold a gaming license in Massachusetts. The Commission tested the premise of that theory: that everyone who theoretically should have been separated from the Company has in fact been separated from the Company. Mr. Maddox presents a unique case given his longevity with the Company, exposure to information pertaining to the alleged wrongdoings and settlements, and current role as CEO.

A majority of the Commission finds that there is no substantial evidence to disturb the previous suitability determination and thus Mr. Maddox remains suitable. The Commission’s determination was not unanimous. The Commission afforded great scrutiny to his every move and decision as contained in the exhibits and described and observed at the adjudicatory hearing. While the Commission did not hold him to a different or higher suitability standard, the Commission did subject him to intense examination as he is the only executive manager to remain at the Company and critically, now as the CEO, is the current leader of the Company who is being held out as the beacon of corporate transformation.

Questions were raised as to Mr. Maddox’s sincerity, his genuine concern for the Company workforce as a whole versus the bottom line, his ability to ensure that an effective human resources division and robust compliance program are in place, his adequacy in attention and diligence as to all matters at issue here, and his ability to communicate effectively as CEO. The Commission vetted these questions with care and notable concern.

The Commission also recognized, on the other hand, that Mr. Maddox’s professional reputation credits him with acute business acumen, enhanced by broad and unique experience in the gaming industry. It is of great significance to the Commission that he has the full support of the Board of Directors, particularly Chair Phil Satre, who testified at the adjudicatory hearing as to his endorsement of Mr. Maddox. Mr. Satre has had a significant career in the gaming industry, and his path to the Board was led by Elaine Wynn. We see little reason for the Chair to stand behind Mr. Maddox unless he truly believes in him. The Commission found the process of sorting out all of these essential matters, and most significantly, determining which bear on suitability pursuant to G.L. c. 23K, § 12, and which are relevant elsewhere, to be challenging.

The Commission concluded that Mr. Maddox has, at critical junctures, demonstrated questionable judgment and other considerable shortcomings in many facets of his responsibilities

¹⁹ The Commission does not consider its role as one of micromanager of the corporate affairs of the Company, where it substitutes its own judgment for that of the corporate officers and directors. Instead, it views its function as one of gatekeeper, standing guard to ensure that all parts are in place for the Company to establish and maintain a successful gaming establishment in Everett consistent with its obligations and in a manner that ensures integrity.

as CFO, President, and CEO. The majority of the Commission determined, however, that these shortcomings bear primarily on his competence, not his suitability. That is, while we agree there may be overlapping considerations, these shortcomings are largely not matters of honesty, integrity, good character, or reputation of the sort that G.L. c. 23K, § 12 requires us to address. When the evidence of Mr. Maddox's involvement is viewed through that lens, a majority of the Commission concludes that it could not find substantial evidence to warrant a finding to rescind or disturb its prior finding that clear and convincing evidence of Mr. Maddox's suitability exists.

The Commission observes that decisions were not made in a vacuum. There existed a dense terrain over which Mr. Maddox had to navigate. Before we examine the relevant evidence that bears on the status of Mr. Maddox's suitability, the following contextual particulars help set the backdrop.

Wynn Resorts was a founder-led company. In addition to some benefits, there are often complications implicit in that operating model, notably the concentration of power, as there were here. The reticence of those in positions of authority to push back against the founder is one such example. To that end, we recognize the difference between Mr. Maddox's role as CFO and then President of the Company, where he was essentially the second in command and reported to the founder, and his role as CEO, in which reason demanded that he be the backstop for sound decision-making. To add further texture to our evaluation, we acknowledge Mr. Maddox's stated mindset at the time certain events occurred. The attitude was one of loyalty, obtuseness, and tumult that had been bred by the divisiveness of the *Okada* litigation that had been ongoing since 2012, and the divorce of Steve and Elaine Wynn and all that accompanied that process. He and others described the perspective at the time as one of "us versus Okada and Elaine." Given his particular roles at the Company, he indicated that he was concerned that the litigation, given the sizeable demand for damages, could ultimately bankrupt the whole Company and cause its collapse – a concern that took on acute status in early 2018 given the impending trial date. He viewed all of this, perhaps justifiably so, as an existential threat. None of this is a complete defense to Mr. Maddox's role in what took place at the Company, or, in some situations, no defense at all. Indeed, the CEO of such a multi-faceted business must be sufficiently nimble and skilled to never be so distracted or overwhelmed by one challenge as to lose sight of other critical responsibilities. However, with this as a backdrop, we can now examine some of Mr. Maddox's critical missteps and place them in the context in which they belong.

There is no substantial evidence that Mr. Maddox definitively knew about any of the settlements or fully knew about the allegations of wrongdoing involving Mr. Wynn until 2016 after Ms. Wynn filed her amended cross-claim in the *Okada* litigation. Mr. Maddox became more fully aware of the details of the allegations in December 2017 leading up to the publication of the WSJ article in 2018. Mr. Maddox was able to remain largely uninformed despite the fact that many of the highest ranking executives in the Company (Ms. Sinatra, Mr. Tourek, and Mr. Wooden), with whom he regularly communicated and shared office space, had varying degrees of knowledge of the allegations or settlements. The fact that these executives either failed to provide him with the whole story or failed to tell him at all about these critical events suggests a failure of leadership on his part. In any event, when Mr. Maddox did gain knowledge, his response was at all times underwhelming in both substance and appearance.

In the wake of the filing of the amended cross-claim in 2016, Mr. Maddox set out to gain a better understanding as to whether the details of the reported settlement were true or just a

litigation tactic being employed by an aggressive attorney. This led him to ask Ms. Sinatra for a briefing on the situation. She informed him that there was a consensual event that occurred between Mr. Wynn and a Company employee around the opening of the Wynn Las Vegas and that the matter, which had been overseen by the prior general counsel and by outside counsel, had been settled. In response, Mr. Maddox never initiated any sort of investigation or even asked Mr. Wynn himself for an explanation. Even if viewed with reference to the distracting circumstances of the time and his testimony that he suspected that the matter may have revolved more around extortion than truth, Mr. Maddox's response as President of the Company is difficult to comprehend.

The president of a company, and anyone in a management role for that matter, should immediately recognize that the imbalance of power that underlies any relationship between a company CEO and an employee gives rise to an inherently coercive situation that exposes the employee to potential harm and exposes the company to potential liability. The fact that such a relationship has been labeled 'consensual' should be of no consequence. See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986); See also Faragher v. City of Boca Raton, 524 U.S. 775 (1998). In fact, the Company adopted in 2004 a personal relationships policy which addressed this imbalance. Here, Mr. Maddox simply accepted Ms. Sinatra's report and moved on without further inquiry, without regard for the employee involved, and without regard for the exposure faced by the Company. Most troubling to some members of this Commission was Mr. Maddox's failure, even at the April 2019 hearing, to convey with an appropriate degree of confidence current comprehension of the inherent power disparity in such an encounter as well as his apparent lack of understanding as to the long-established status of the law on that point.

Not long before the filing of the 2016 amended cross-claim, an incident that should have warranted diligent review was similarly misunderstood and mishandled by Mr. Maddox in violation of the Company's human resources policies. In 2014 or 2015, Mr. Wooden, then President of Wynn Las Vegas and a direct report to Mr. Maddox, told Mr. Maddox that employees in the spa were uncomfortable by a request from Mr. Wynn for a sensual massage. The request was supposedly made in the lead-up to a couple's massage planned for Mr. Wynn and his wife, Andrea. Upon learning of the concerns from Mr. Wooden, Mr. Maddox's response was one of confusion in that he did not know the meaning of "sensual massage". Given that it was requested in the context of a couple's massage and Mr. Wynn and his wife shared a close relationship, Mr. Maddox never imagined that any sort of misconduct could be involved. Accordingly, he directed Mr. Wooden to speak to Mr. Wynn about the matter directly, and to tell him that people were uncomfortable so "knock it off."

Here, the Commission finds that Mr. Maddox failed to comply with the Company's existing human resources policies and procedures and did not adequately address the safety and well-being of the Company's employees. Upon learning that an employee working in the sensitive and vulnerable environment of the spa complained that she had been made uncomfortable by comments made by the CEO, Mr. Maddox did not take appropriate or sufficient action. While Mr. Maddox may have been accustomed to people complaining that Mr. Wynn was a tough boss, mean, or a bully, this was not that situation. First, the Commission finds that the employee's complaint was reported through appropriate channels. She appropriately directed her complaint to her supervisor, who then reported it to her supervisor, Mr. Gullbrants, who then reported it to his supervisor, Mr. Wooden, who then reported it to his

supervisor, Mr. Maddox, who held the top position just below the CEO, Mr. Wynn – the subject of the complaint. This complaint demanded an investigation pursuant to the Company’s human resources policies. It is not for the recipient of such a complaint to immediately determine its veracity or merit; that is the purpose of investigations. Regardless of the perceived merit or perception that it may just be a misunderstanding, this complaint raised potential harassment issues which required a thorough investigation by individuals knowledgeable in handling such matters. Rather than initiating that investigation, Mr. Maddox simply directed his underling to talk to the alleged perpetrator. Had Mr. Maddox taken appropriate action at this time in 2014, the earlier failures to investigate past allegations may have been brought to light, possibly sparing the Company and all of its assets, including its employees, ongoing risk. It is of further note that Mr. Maddox acknowledged that he still has not personally met with spa employees regarding the Company’s commitment to change.

Mr. Maddox also inadequately addressed other serious matters, showing a concerning lack of diligence and attention to detail. In 2008, when Mr. Maddox was CFO, he learned of a \$700,000 entry entitled “legal settlement,” which was recorded on the quarterly disbursement report provided to the compliance committee. The entry indicated that payment had been made using Company funds. When Mr. Maddox asked Mr. Schorr, he was told that the payment was paid to a former employee who had fallen on hard times and whom Steve and Elaine Wynn wanted to help. Reasonable as it may seem that they may have wanted to help someone, and permissible as the authorization of a payment of that size may have been by the property president or CFO, as corporate CFO of a publicly traded company, it seems that once told about the purpose of the payment, the CFO would have inquired as to why Company funds would be used for such a purpose. Further, if that were the explanation, the CFO may rightfully question why it would be labeled on the disbursement report as a “legal settlement.” Had he done so, Mr. Maddox may have determined the true purpose of the payment, which was in actuality a legal settlement of a claim of sexual misconduct. Again, a majority of the Commission finds that this lack of diligence does not bear on Mr. Maddox’s character. If he had conducted a more diligent inquiry, though, he may have acquired a critical piece of information that would have added context to the previously described 2016 and 2014-15 events.

When viewed collectively, his knowledge of the 2008 \$700,000 “legal settlement,” the 2014 spa incident involving the “sensual massage,” and the amended 2016 cross-claim information, we observe a colossal missed opportunity by the president of the Company to have detected what others may have known, which was that there was a critical problem brewing. Had Mr. Maddox taken steps to investigate these issues, he would have been more informed and more apt to conduct an additional investigation when, in 2017, in preparation for his deposition as part of the *Okada* litigation, he learned that a separate matter in 2005 may have involved some type of assault. Instead, he concluded that this characterization was likely just an aggressive litigation tactic.

In or about May 2016, Mr. Maddox learned of serious allegations made about one of the members of the Board of Directors, Dr. Ray Irani. Despite the Company’s knowledge of what appeared to be serious allegations against him made in a civil complaint, Dr. Irani remained on the Board of Directors for nearly two years, without any evidence of direct inquiry by the Company as to the details and status of the civil complaint. While there are a number of individuals who bear responsibility for this, Mr. Maddox, as President of the Company, should

have been more appropriately concerned about the allegations against a member of the Board of Directors and qualifier to the Massachusetts license and, at the very least, pursued further investigation. This episode culminated in Mr. Maddox's testimony at the adjudicatory hearing of his understanding of the allegation having "something to do with domestic help," demonstrating a continuing lack of appreciation for and relevant awareness of the serious nature of the allegations reportedly brought against Dr. Irani and his wife, which included human trafficking.

This lack of inquiry and diligence is not just a relic of the past. A number of claims were filed in the wake of the publication of the WSJ article by Company employees relative to the behavior of Mr. Wynn. While the handling of these types of complaints certainly may not ordinarily fall to the company CEO, given the circumstances in which the Company finds itself, at a minimum, Mr. Maddox should have had an interest in reviewing the complaints to ensure a complete understanding of the exposure faced by the Company. Despite the fact that the matters were overseen by the special committee, the Commission finds Mr. Maddox's failure to learn of their detail notable.

These examples as to Mr. Maddox's lack of diligence are noteworthy in that he is now the CEO of the Company and being held out as an agent of change and good judgment. The majority of the Commission has determined that these deficiencies bear more on his competency rather than on suitability as defined by statute. Where they do bear on suitability, they do not amount to substantial evidence sufficient to disturb the Commission's earlier finding of suitability. In both instances, they do raise concerns relative to Mr. Maddox's ability to be an effective CEO – an issue that the Commission acknowledges should best be left to the Board of Directors. These issues are relevant, though, to the extent that such lack of diligence and judgment could lead to an inability of the Company to successfully maintain the gaming establishment in Everett.

In a similar vein, there are a number of instances in which Mr. Maddox more recently exercised questionable judgment. The Commission is troubled by the manner in which Ms. Sinatra's employment with the Company was terminated.²⁰ Ms. Sinatra was a longtime employee who Mr. Maddox knew, or should have reasonably known, by this time (i) had knowledge of certain allegations and settlements against Mr. Wynn that went without timely report and investigation, (ii) lacked competency in regulatory compliance even though compliance was one of two principal responsibilities under her employment contract, and (iii) failed persistently to advise Mr. Maddox and others as to the scope or substance of risks to the Company with the diligence and understanding of detail reasonably expected of a general counsel of a publicly traded company. Mr. Maddox ultimately did recognize that Ms. Sinatra was no longer the right person to fill the general counsel position and stated that a decision needed to be made as to whether she should be terminated for cause and how that would impact any severance. Yet, at that time, he was still considering whether to find another role for her within the Company. While he may not have had access yet to the *Investigative Report* of the special committee or the IEB Report, it is not unreasonable to conclude, given his role and tenure at the Company, that he sensed at that time the extent of corporate failure in the handling of complaints against Mr. Wynn and other compliance matters dating back years – matters for which Ms. Sinatra would have been directly responsible. That he would consider moving Ms.

²⁰ See IEB Report at p. 174-75.

Sinatra elsewhere evidences loyalty over the best interests of the Company and, in the eyes of some Commissioners, over integrity. Further, when the Company had an opportunity to publicly demonstrate that it takes its transformation seriously by considering terminating Ms. Sinatra's employment for cause based on her role in that corporate failure, it instead elected to pay her nearly \$10 million in exchange for her removal from the Company. Mr. Maddox stated that he followed the advice of newly retained counsel (and outside consultants) and agreed to execute a severance agreement for Ms. Sinatra without urging a close examination of her role in the situation, and without demanding that a claw-back provision be included in the event that such role were established in the future.

Mr. Maddox's involvement in the handling of Mr. Wooden's employment was similarly disappointing. When it became clear that Mr. Wooden had been aware of allegations involving Mr. Wynn and failed to take appropriate action, he was allowed to remain as the president of Wynn Las Vegas on a six month term of probation with hopes of rehabilitating his relationship with the "pockets" of employees of whom he had lost trust. This was contrary to the recommendation of the special committee, which recommended his outright termination. The decision at the Board's level to allow Mr. Wooden to remain was not unanimous. There was, accordingly, an opening for Mr. Maddox to make a show of leadership and put the principles of a transforming Company on display. Instead, again, rather than acting decisively to remove someone who covered up the allegations, he supported the decision to keep Mr. Wooden in his position; a decision which proved to be short-lived. Once it was clear that Mr. Wooden had lost the confidence of regulators and that he represented a threat to the Company, he resigned.

The manner in which the undercover operation by James Stern was conducted is also of concern. Mr. Maddox paid little attention to the consequences of authorizing the operation where such action had the potential to jeopardize the ongoing investigations then being conducted by the Commission and special committee. Mr. Maddox's authorization of the operation was careless and exposed the investigation to risk by shaking the trust of critical witnesses who were in the process of being interviewed.

While most Commissioners do not view these missed opportunities as an indictment of Mr. Maddox's character requiring disruption of his suitability, the Commission is concerned by the number of failures to exhibit leadership. Ushering a company through a crisis requires strong leadership particularly where the company is undergoing dramatic changes. To achieve that result, Mr. Maddox needs to improve his capacity and competencies in certain areas: notably, in employee relations, communication, and corporate compliance. By demanding sound business practices in all areas, the Commission expects that the workforce in Everett will have a positive atmosphere free from potentially harmful elements. There are a number of instances in which Mr. Maddox failed to understand the potential effects that certain of his decisions had on the workforce. For example, in the immediate wake of the publication of the WSJ article, Mr. Wynn convened town hall-style meetings with employees, including a specific meeting with spa employees. On at least one occasion, it was reported that Mr. Wynn asked employees to raise their hand if they thought he had harassed them. Such an inquiry (and the meetings altogether, for that matter) was, of course, insensitive and inappropriate. All the while, Mr. Maddox went about his business without suggesting to Mr. Wynn that the meetings should not be conducted. To the extent that he actually thought they were a good idea and important for employee relations, it is notable that Mr. Maddox, as the president of the Company, only attended one of

the many such meetings. He did not take the leadership opportunity to appear before all of the employees as a steadying hand while the Company was in crisis. Also striking was his failure to recognize the inherent coerciveness of those meetings until questioned about them at the adjudicatory hearing.

One of the areas that the Company points to as illustrative of its transformation is its new workforce policies. Regardless of how well-written a policy or protocol is, it is only meaningful if it is properly implemented and communicated by management. Conversely, it would be worthless if ignored. Whether the new policies put in place by the Company will be meaningful is an open question. To the extent that past examples of the tone at the top are predictive of future performance, there is cause for concern. We first note a general lack of understanding by Mr. Maddox, the person at the top of the Company, when it comes to reporting matters to the Board of Directors, achieving regulatory compliance, and reporting obligations to regulators. While we credit him with hiring a seasoned general counsel who is well-versed in such obligations, it is imperative that he at least have a working understanding of such responsibilities. His explanation as to why he was unaware of the Communications Protocol implemented by the Board of Directors in 2016 upon first learning of the 2005 settlement (*i.e.*, that he did not read the email transmission of the policy) does not instill great confidence. To the contrary, his explanation for failing to even read the email forwarding the Communications Protocol was offensive to the principles of corporate compliance. Similarly, while he would not be expected to have memorized the entire enhanced harassment policy, it was worrisome that when asked at the adjudicatory hearing to name a few areas that had been updated, or even hazard an educated guess, he was unable to do so.

Though the recital of Mr. Maddox's missteps and shortcomings may seem extensive and we are disappointed by the manner in which many of those items were handled, they largely relate to matters capable of remedy, whether through training or enhancement of infrastructure and personnel. The picture would be incomplete, though, were we not to highlight Mr. Maddox's strengths and some of the positive developments that have occurred at or under his direction.

We begin with his vast experience in gaming and corporate finance. The Commission acknowledges Mr. Maddox's expertise in these areas. This expertise is one that has taken a career to hone. An important factor that makes him particularly qualified to serve as CEO of the Company, however, is his keen understanding of the Macau market. He spent three years in the region during the formative period of Macau's modern gaming era working to develop the Company's stake in the region from the ground up. The Company now owns two multi-billion dollar properties in Macau. Though not solely Mr. Maddox's doing, there is no evidence to counter a finding that he played a significant role in leading the Company to a position of prominence in the top economic gaming region in the world. Given the sizable contribution that the Macau properties add to the bottom line of Wynn Resorts, Mr. Maddox's expertise in this area is highly significant.

Furthermore, Mr. Maddox's business and finance acumen was on full display when he was able to place approximately \$1.4 billion of Mr. Wynn's shares of the Company in the hands of well-respected institutional investors (T. Rowe Price and Capital Research Group), thus facilitating a smooth transfer in what could have been a turbulent transaction. This was a consequential achievement that helped preserve the fiscal health of the Company in the midst of

a corporate crisis. In a similar vein, we credit his instinct and ultimate efforts to collaboratively resolve the complicated *Okada* litigation and to negotiate the stand-still agreement with Ms. Wynn within weeks of assuming the CEO role. This settlement helped the Company move past the crippling distraction that had been ongoing for seven years.

Mr. Maddox has also gone to great lengths to staff the executive and board ranks with capable, competent individuals of a wide range of backgrounds. He is now supported by a new general counsel, senior vice president of human resources, and chief financial officer, who all have broad experience in their respective fields and are certainly qualified to help lead the transformation of the Company. Further, Mr. Maddox led the movement to bring new members to the Board of Directors who had no previous affiliation with the Company. While the gender diversity that was achieved in the new members is laudable, the Board does lack an overall diversity that could be of tremendous benefit moving forward, which Mr. Satre acknowledged at the adjudicatory hearing and signaled the Board's intention to address its own diversity in the near future. On the whole, the new Board members bring a depth of experience in corporate governance and leadership that, in collaboration with the remaining members of the Board, should be a positive influence on the business practices and approach of the Company in the future.

While it is easy to highlight the negative things that occur under one's leadership, credit should also be given when positive developments take effect under that same watch. Here, there are a variety of changes that have taken effect since Mr. Maddox became CEO that are significant. They include the splitting of the chair of the Board of Directors from the CEO position, which will help to ensure that power cannot be consolidated in any one individual. The combination of those positions is often the hallmark of a founder-led company, which Wynn Resorts is no longer. To that end, Maddox has received the full endorsement of the new chair of the Board of Directors. It is meaningful that the new chair, who is highly respected in the gaming industry, has no past affiliation with Mr. Maddox and was brought to the Board by Ms. Wynn, has backed Mr. Maddox as the CEO without reservation. Additionally, the Company, under Mr. Maddox, reworked the entire compliance committee so that it is comprised of external members as opposed to internal.²¹ This should help to ensure a more objective outlook and robust oversight of the critical compliance function.

The Company was wholly cooperative with the IEB during the course of its investigation of this matter. While required by law, it is notable that the Company provided full access to their records and employees, and waived privileges, to ensure that the IEB was able to complete its comprehensive investigation. We credit Mr. Maddox for helping to ensure this outcome.

The evidence demonstrates that Mr. Maddox has work to do to attain CEO-level proficiency in regulatory compliance, employee relations, and overall communications. However, there are a number of notable developments in those areas suggesting that he is gaining a clearer understanding of importance of those principles to the CEO role. For example, the Company has updated its personnel policies and begun implementing updated training in

²¹ It should be noted that the underlying compliance plan of the newly introduced compliance program appears to be written to comply with Nevada state law and is subject to Nevada's amendment without say by Massachusetts. We expect the plan to be reviewed and revised to satisfy Massachusetts law and, if necessary, devised separate and apart from the plan for Nevada to ensure balance in decision-making for both licensees.

areas such as sexual harassment and diversity. Having a seasoned VP of Human Resources at the direct helm of this process is certainly encouraging. Further, his response to the 2017 harassment complaints at the Everett property, which occurred prior to the publication of the WSJ article, indicates that he does appreciate the importance of conducting a thorough, contemporaneous investigation and of taking whatever remedial action is necessary to ensure a safe, comfortable working environment for employees. Despite that, it was generally disappointing at the adjudicatory hearing that Mr. Maddox did not appear to be well-versed, or versed at all in some cases, relative to the contents and scope of the new programs. “Reform is ‘a state of mind’ that must be manifested by some external evidence.” In the Matter of Paul Waitz, 416 Mass. 298, 305 (1993). That was not on sufficient display at the adjudicatory hearing. There are, however, a number of other additions to the program that are supportive of the idea that meaningful change at the Company is underway. For example, a Women’s Leadership Forum was created, a Wynn Scholarship Fund was established, community engagement and volunteerism has been emphasized, and a Great Places to Work survey has been conducted. These are all positive developments.

The Commission struggled in its determination regarding whether and when the concept of leadership fits into an overall analysis of a person’s honesty, integrity and character. We reject the notion that leadership could never be a component of suitability. Ultimately, a majority of the Commission believes that the quantum of evidence does not rise to the level of substantial evidence necessary to disturb the suitability finding. Accordingly, Mr. Maddox remains suitable as a qualifier to the gaming license. See G.L. c. 23K, § 14(h).

B. ELAINE WYNN

The Commission unanimously determined that there was no substantial evidence to determine lack suitability and thus Ms. Wynn’s previous finding of suitability stands. However, there were certain aspects about her past behavior that raised concerns in the minds of some of the Commissioners. Particularly troubling was the fact that in 2009, when Ms. Wynn became aware of the 2005 settlement agreement and rape allegation against Mr. Wynn, she did not directly inform the Board or regulators then or over the course of the several years that she was on the Board of Directors until she filed her cross-claim referencing the allegations in 2016. Despite this delay, the Commission finds no evidence that Ms. Wynn’s belief that she had satisfied her fiduciary duties in 2009 was unreasonable. It is unclear at the present what would have occurred, if anything, had Ms. Wynn taken more aggressive steps to notify the board at the time. However, the Commission acknowledges that but for the actions taken by Ms. Wynn in 2016, the 2005 allegations may never have been exposed.

While Ms. Sinatra disputed that Ms. Wynn notified her of the allegations in 2009 when interviewed by the IEB, Ms. Sinatra refused to appear at the adjudicatory hearing to answer questions and to be challenged by any conflicting evidence.²² In light of these facts, and the contemporaneous evidence from that time that corroborates Ms. Wynn, the Commission finds credible the testimony of Ms. Wynn that she informed Ms. Sinatra of the 2005 allegations in 2009.

²²The Commission issued a subpoena to appear at the adjudicatory hearing and testify to Kimmarie Sinatra. Through her attorney, she declined to appear. The Commission again sought her testimony following the adjudicatory hearing and her attorney again declined.

Ms. Wynn spoke with a number of other people after learning about the allegations and settlement in 2009, including: her divorce attorney, Mr. Wynn, Arthur Nathan (former senior vice president and Chief Human Resources officer of Wynn Las Vegas), Doreen Whennen (former vice president of hotel operations Wynn Las Vegas), Attorney Schreck, and Russell Goldsmith (a board member from 2008-2012). It was during these conversations that Mr. Nathan made reference to Mr. Wynn's history of unethical/inappropriate and possibly illegal behavior, which Ms. Wynn memorialized in her own contemporaneous notes. Ms. Wynn learned that the settlement contained a retraction and that there was disagreement about whether the incident was consensual.

The fact that Ms. Wynn was aware enough to memorialize the conversation she had with Mr. Nathan shows that she recognized the potential dangers posed to the Company by the chair and CEO engaging in a pattern of inappropriate behavior. The various conflicting facts she learned concerning whether the event was consensual and Ms. Wynn's reaction thereto showed a concerning lack of diligence to further investigate or address an extremely troubling event. While Ms. Wynn's belief that her notification to Ms. Sinatra satisfied her obligations as a Board member may not be unreasonable, Ms. Wynn's actions in 2016 concerning her cross-claim demonstrated that she was fully capable of mobilizing the Board to action and clearly could have done so years earlier. The Commission is also concerned by the fact that Ms. Wynn did not notify the Commission of the 2016 cross-claim after she filed it. Ms. Wynn also engaged in back-and-forth correspondence with the Board and their outside auditors where she referenced other concerning incidents involving Mr. Wynn. A further review of those materials establishes a continuation of the turf war that pervaded the Board's operation at that time and further impeded its ability to fully vet allegations of misconduct.

The Commission does not find that there is substantial evidence of a lack of clear and convincing evidence sufficient to disturb Ms. Wynn's original finding of suitability from 2013. The Commission finds no evidence that Ms. Wynn willfully provided false or misleading information to the Commission at any time. With respect to her knowledge of the 2005 allegations and settlement, she relied on the advice of outside counsel and general counsel in reporting that information. While the Commission believes that Ms. Wynn certainly could have done more to prompt an investigation, to notify regulators, and to more broadly raise the issue with the Board as a whole in 2009, we cannot conclude that she was legally obligated to do so. Her actions spoke much more to her self-interest than to the interests of the employees of the Company and that is regrettable.

C. ELIZABETH PATRICIA MULROY

The Commission unanimously determined there was no substantial evidence to determine lack suitability and thus Ms. Mulroy's previous finding of suitability stands. There was extensive discussion regarding Ms. Mulroy's actions after she joined the Board of Directors in November 2015, as well the various decisions that she candidly admitted should have been handled differently. Critically, the Commission recognizes that Ms. Mulroy was new to the Board at the time that Ms. Wynn's fifth amended cross-claim was first discussed and that she joined the Board at a contentious time during the *Okada* litigation when both Board members and the Company's general counsel were named defendants. Despite her role as a new Board member, the Commission finds it troubling that Ms. Mulroy failed to recognize the potentially coercive nature of a consensual relationship occurring between the Company's CEO and a low-

level employee. See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986); See also Faragher v. City of Boca Raton, 524 U.S. 775 (1998). The issue of consent was further highlighted when Ms. Mulroy and the Board were told that the settlement contained retraction language, which she understood applied to an allegation that the incident had been non-consensual. Despite this understanding in 2016, Ms. Mulroy did not pursue an investigation. Ms. Mulroy's other reactions to the cross-claim allegations, however, were reasonable:

- She and the Board consulted with their general counsel, Ms. Sinatra.
- They were advised on several occasions that the incident was an outlier, which was paid for with Mr. Wynn's personal funds, and that the Company was given a release.
- She and the Board had Governor Miller confront Mr. Wynn and Governor Miller reported back that the relationship was consensual, the settlement was made with personal funds, and the Company was given a release.
- She and the Board consulted with Attorney Layne of Gibson Dunn concerning the merits of the investigation.
- She and the Board consulted with Attorney Langberg concerning pursuing a defamation claim and whether an investigation of the allegations would be discoverable in the *Okada* litigation.

Although the Commission may question whether Ms. Mulroy should have done more to personally investigate the allegations once they were brought to her attention, the Commission finds that Ms. Mulroy was credible and candid in her testimony at the adjudicatory hearing where she acknowledged that both she and the Board had failed to fully investigate the 2005 incident and failed to consider the interests of the employee involved in the event. Recognizing and taking responsibility for such a mistake demonstrates the integrity and character elements contemplated by G.L. c. 23K. Further, the Commission notes that Ms. Mulroy took a leadership role as the chair of the internal special committee investigating the WSJ allegations and that she was an ex officio member of the outside compliance committee.

While the Commission questioned Ms. Mulroy's decision to retain Mr. Wooden for an attempted rehabilitation of his image, this decision reflects on Ms. Mulroy's judgment and does not speak to her suitability. Further, Ms. Mulroy's failure to recommend an investigation of the 2005 incident when she learned about it in 2016 may call into question her competency/efficacy as a board member, but this failure does not rise to the level of substantial evidence of a lack of clear and convincing evidence of suitability as an individual qualifier.

4. CLEAR AND CONVINCING EVIDENCE HAS BEEN PRESENTED THAT ELLEN WHITEMORE, CRAIG BILLINGS, PHILLIP SATRE, DEE DEE MYERS, BETSY ATKINS, WENDY WEBB, AND RICHARD BYRNE MEET THE SUITABILITY STANDARDS SET FORTH IN G.L. C. 23K, § 12.

As described in this decision, the Company has seen significant change in the individuals deemed to be qualifiers as part of the Wynn MA, LLC category 1 gaming license. The changes began in 2017 with the appointment of Craig Billings as CFO of Wynn Resorts, taking over that role from Mr. Maddox, who in 2017 was both the President and CFO of Wynn Resorts. The most significant changes occurred in 2018 with the resignation of Mr. Wynn as CEO and

Chairman of the Board of Wynn Resorts and the appointment of five new independent board members and Mr. Maddox to the Wynn Resorts Board of Directors. The final significant change occurred in 2018 when Ms. Sinatra, General Counsel of Wynn Resorts, resigned and was replaced as General Counsel by Ellen Whittemore.

These changes resulted in seven new qualifiers subject to investigation by the IEB and review by the Commission.

The new qualifiers are: Betsy Atkins, Craig Billings, Richard Byrne, Margaret (Dee Dee Myers), Philip Satre, Winifred (Wendy) Webb, and Ellen Whittemore.

Each new qualifier submitted a Multi-Jurisdictional Personal History Disclosure (“MJPHD”) form. The MJPHD form is used by most jurisdictions in order to receive detailed personal and financial information about individuals who are deemed to be qualifiers as part of a gaming license. Upon receipt of the completed MJPHD form, the IEB commenced an investigation into the suitability of each individual. See G.L. c.23K, 12(a); 205 CMR 115.01(3). The IEB’s investigation included verification of the information included in the form, a criminal history background investigation, a review of the individual’s financial history, and an in-depth personal interview with each individual where the IEB could ask questions about the information included in the MJPHD form, questions about any matters uncovered as part of the investigation, and questions about any other topics the IEB determined to be in the interest of the Commission. The IEB conducted such an investigation and reported its findings and recommendations to the Commission by way of an Investigation Report – Individual Qualifier for Wynn MA LLC (the “Report”) for each of the seven individuals. See 205 CMR 115.03(2).

The IEB’s investigation on each individual considered and the Report contains information relative to the following areas:²³

- (1) the integrity, honesty, good character and reputation of the individual;
- (2) the financial stability, integrity and background of the individual;
- (3) the business practices and the business ability of the individual to establish and maintain a successful gaming establishment;
- (4) whether the individual has been licensed by gaming regulators in other jurisdictions and has a history of compliance with gaming licensing requirements in those jurisdictions;
- (5) whether the individual, in the past or at the time of application, is a defendant in litigation; and
- (6) whether the applicant is disqualified from receiving a license under G.L. c. 23K, § 16.

All individuals subject to a suitability determination must establish their qualifications by clear and convincing evidence, as discussed in detail in Section IV of this Decision. 205 CMR 115.01(2); see also G.L. c.23K, §13(a). Below is a brief description of each individual’s background and the IEB’s finding regarding suitability. If the Board is to be truly refreshed and engaged, the Commission expects each Board member to dedicate ample time to commit to

²³ The Commission notes that during this process, the IEB asked each individual applicant about any history of legal settlements.

ensuring the effective oversight of the Company. The IEB did not find any evidence that raised questions as to the new qualifiers' suitability.

Commission's Findings on Individual Qualifier Suitability

In employing the principles articulated in the *Bally's* decision the Commission finds that all of the individual qualifiers listed below have satisfactorily demonstrated their good character, honesty, and integrity. Based upon the factual findings contained in each individual Report provided by the IEB and the testimony provided by each individual at the adjudicatory hearing, the Commission finds that each individual has satisfied their burden of proving their suitability and meeting the standards for suitability under G.L. c. 23K §12 by clear and convincing evidence. Each individual is accordingly issued a positive finding of suitability. See 205 CMR 115.05(3).

A. BETSY ATKINS

Betsy Atkins is a three-time CEO, serial entrepreneur and founder and the CEO of Baja Corporation, a venture capital firm focused on technology, renewable energy, and life sciences. In addition to her service on the Wynn Resorts Board of Directors she also serves on the boards of Schneider Electric and SL Green Realty and has previously served on the board of Cognizant Technology. She was the CEO of NCI, a creator and manufacturer of nutraceutical foods such as PowerBar. Ms. Atkins was also the CEO of Clear Standards which developed enterprise level software for energy management and sustainability. Ms. Atkins is a corporate governance expert whose notable work in that area has been featured in The Financial Times, Business Insider, and Forbes. She is a frequent guest on financial news shows and is the author of *Behind Boardroom Doors: Lessons of a Corporate Director*. Ms. Atkins brings to the Wynn Resorts Board of Directors extensive expertise in corporate governance that includes technology, retail, financial services, healthcare, restaurants and hospitality, automotive, and logistics.

Based on the IEB's investigation, there are no known facts that would disqualify Ms. Atkins for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

B. CRAIG BILLINGS

In March of 2017, Mr. Billings was named as the Chief Financial Officer and Treasurer of Wynn Resorts. As CFO and Treasurer, he is the senior executive responsible for managing the financial health of the Company, including management of the Company's accounting and treasury functions. His specific duties include development of financial and operational strategy and the ongoing development and monitoring of control systems designed to preserve Company assets and report accurate financial results. Mr. Billings reports to Mr. Maddox.

Mr. Billings has been involved in the gaming industry for most of his professional career, specializing in digital innovation, mergers and acquisitions, and capital structure management. Immediately prior to joining Wynn Resorts, Mr. Billings was self-employed as an independent advisor to and an investor in firms in the gaming industry. Prior to that, he served in various roles at Aristocrat Leisure Ltd, including as Chief Digital Officer and Managing Director of Strategy & Business Development. Before joining Aristocrat, Mr. Billings served as Chief Executive Officer and President of ZEN Entertainment, Inc. He also served in various senior

roles at International Game Technology and prior to his employment with International Game Technology, he worked in the investment banking division of Goldman Sachs in London. Mr. Billings began his career in the audit practice at Deloitte & Touche, and then moved to Lehman Brothers prior to Goldman Sachs.

Based on the IEB's investigation, there are no known facts that would disqualify Mr. Billings for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

C. RICHARD BYRNE

Mr. Byrne has worked extensively with numerous gaming companies including Wynn Resorts in arranging debt and equity financing and providing strategic advice. He is currently the President of Benefit Street Partners and had a long and illustrious career with Deutsche Bank including becoming the Global Co-head of Capital Markets and the CEO of Deutsche Bank Securities, Inc. Mr. Byrne also serves as Chairman and Chief Executive Officer of Business Development Corporation of America and as Chairman and Chief Executive Officer of Benefit Street Partners Realty Trust Inc. He serves as a member of the Board of Directors of MFA Financial, Inc. and the New York Road Runners. In the gaming, lodging and leisure sector, Mr. Byrne was a perennially top ranked credit analyst. Mr. Byrne brings to the Wynn Resorts Board of Directors extensive financial expertise and profound knowledge of the gaming, lodging, and leisure sector.

Based on the IEB's investigation, there are no known facts that would disqualify Mr. Byrne for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

D. MARGARET (DEE DEE) MYERS

Ms. Meyers is the Executive Vice President for Worldwide Corporate Communications and Public Affairs at Warner Bros. Entertainment. She leads the Company's strategic communications, media relations, crisis management, branding, executive positioning, state and local government relations, corporate responsibility, and philanthropy programs. Ms. Myers was notably the first woman to serve as White House Press Secretary from 1993 to 1995 where she traveled around the country and around the world with President Bill Clinton serving as his primary spokesperson and senior advisor. She worked as a consultant on the NBC television show *The West Wing* across its seven year award winning run. In 2010, she joined the Glover Park Group as Managing Director of Strategic Communications and Public Affairs where she counseled a broad range of clients in the media, non-profit, political and corporate sectors helping them shape communications strategies, build advocacy campaigns, refresh brands, manage crises and plan and execute events. She is the author of the 2008 New York Times bestselling book, *Why Women Should Rule the World* which argues that increasing the number of women in leadership positions across the public and private sectors will provide more diverse perspectives, improve decision-making and lead to better outcomes. Ms. Myers brings to the Wynn Resorts Board of Directors expertise in global strategic communications, media relations, crisis management, branding, corporate social responsibility, and philanthropy.

Based on the IEB's investigation, there are no known facts that would disqualify Ms. Myers for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

E. PHILIP SATRE

Mr. Satre is a seasoned gaming executive with regulatory experience in several jurisdictions and has served in various leadership roles in the gaming industry for more than 38 years including as Chairman and CEO of Harrah's Entertainment and Chairman of the Board of International Game Technology. He is the President of the National Center for Responsible Gaming and currently serves as a member of the board of fashion retailer Nordstrom, Inc., from which he will retire in the near future. Mr. Satre has also served on the boards of International Game Technology, NV Energy, Tabcorp Holdings Ltd, and Rite Aid Corporation. In the non-profit sector, he has served in various roles including as trustee of the National World War II Museum, a trustee of the National Automobile Museum-the Harrah Collection in Reno, NV and an Emeritus member of the Stanford University Board of Trustees. Mr. Satre has received numerous accolades for his notable work including election to the American Gaming Association's Hall of Fame and UNLV's Business Hall of Fame. He has also received Lifetime Achievement Awards from the American Gaming Summit and the East Coast Gaming Congress. Mr. Satre has also previously been named to the Directorship 100 by the National Association of Corporate Directors, one of the nation's top 100 Chief Executives by Chief Executive Magazine, Gaming Executive of the Year by Casino Journal and best chief executive in the casino and hotel industries by the Wall Street Transcript. Mr. Satre brings to the position of Chairman of the Board of Wynn Resorts an unparalleled skill to effectively respond to complex financial and strategic challenges and wide ranging experience with corporate governance matters. He also serves as an *ex officio* member of Wynn Resorts Compliance Committee providing overlapping representation on the Wynn Resorts Compliance Committee and Board of Directors.

Based on the IEB's investigation, there are no known facts that would disqualify Mr. Satre for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

F. WINIFRED (WENDY) WEBB

Ms. Webb is the CEO of Kestrel Corporate Advisors, an advisory services firm counseling organizations on strategic business issues, including growth initiatives, digital marketing, board governance, and investor relations. From 1988 to 2008, she served as a senior executive at The Walt Disney Company, including serving as Senior Vice President of Investor Relations and Shareholder Services where she was responsible for the company's strategic and financial communications worldwide and for governance outreach. From 2008 to 2010, she was part of the senior team at Ticketmaster and from 2010 to 2013, she was Managing Director at Tennenbaum Capital, now part of BlackRock. In addition to Wynn Resorts, Ms. Webb currently serves on the boards of ABM Industries where she serves on the Audit and Strategy & Risk Committees as well as on the board of trustees for American Homes, a real estate investment trust. She is also co-chair of non-profit Women Corporate Directors, Los Angeles County chapter. Previously, Ms. Webb was an independent director for TiVo Inc. where she served on the Audit and CEO Search Committees and for Jack in the Box where she served on the Finance and Audit Committees and chaired the Governance Committee. In addition, Ms. Webb's non-

profit independent director roles have included PetSmart Charities Inc. and the Smith College Board of Trustees. Ms. Webb brings to Wynn Resorts Board of Directors experience developing award winning investor relations, strategic communications and brand building programs. She also brings significant industry expertise in travel and tourism, hospitality, media and entertainment, and facilities services. She is a board Audit Committee qualified Financial Expert. Ms. Webb has been recognized as a 2018 National Association of Corporate Directors *Directorship 100* Honoree which recognizes the most influential leaders in the boardroom and corporate governance community and those who have demonstrated a commitment to advancing exemplary board leadership, oversight and courage. In addition, Ms. Webb has also recently received *Directors & Boards Magazine 2018 Directors to Watch* recognition, which recognizes up to 20 leading and accomplished women directors on public company boards. Ms. Webb was also recently honored as one of *Women Inc.'s 2018 Most Influential Corporate Board Directors*.

Based on the IEB's investigation, there are no known facts that would disqualify Ms. Webb for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

G. ELLEN WHITEMORE

In August 2018, Ellen Whittemore was named as the General Counsel of Wynn Resorts. Ellen Whittemore is a world renowned gaming regulatory attorney who has represented gaming companies for over 30 years in a variety of areas such as licensing, compliance, and regulatory investigations. She has worked as a partner at leading Nevada gaming law firms as well as with the Nevada Attorney General's Office, serving as a supervising deputy attorney general for the Gaming Division, which provides legal counsel to the Nevada Gaming Control Board and the Nevada Gaming Commission. In that capacity, she was the primary author of several Nevada Gaming Commission regulations including those regarding accounting requirements and manufacturers and distributors. Ms. Whittemore has been recognized in Chambers USA for gaming and licensing law as well as Best Lawyers in America for gaming law and information technology law. As a private attorney she was the architect of the fully independent compliance program of MGM Resorts International. She is the only woman on the Executive Committee of the Board of the American Gaming Association. She has also served since August 2017 as a member of the Board of Global Gaming Women the goals of which are to support, inspire and influence the development of women in the gaming industry. She is the treasurer of the International Association of Gaming Advisors and a member of the International Masters of Gaming Law. Ms. Whittemore is a former trustee of the University of Nevada, Reno Foundation Board. Her extensive background in gaming law and regulatory compliance matters in Nevada and throughout the United States will assist Wynn Resorts to refocus its efforts on regulatory compliance and reestablish its relationships with gaming regulators.

Based on the IEB's investigation, there are no known facts that would disqualify Ms. Whittemore for suitability based on any of the criteria listed in the gaming laws or regulations of the Commonwealth of Massachusetts.

Having held that the Company's individual qualifiers are and remain suitable, the Commission moves on to the question of the Company's suitability.

5. THE COMMISSION'S 2013 SUITABILITY DECISION CONCERNING WYNN RESORTS, LIMITED AND WYNN MA, LLC STANDS.

The Commission found unanimously that the Company suitability determination should not be disturbed; however, the Commission was troubled by many details discussed in the IEB Report and at the adjudicatory hearing.

Suitability of a gaming licensee, as established by G.L. c. 23K, § 12 and discussed in Section II of this Decision, is the amalgam of several categories which must be viewed holistically: (1) honesty, integrity, and good character; (2) business practices and business ability to establish and maintain a successful gaming establishment; and (3) financial stability and integrity. There is no way for the Commission to definitively determine whether the Company would have been deemed unsuitable at a particular point in time between 2013 and the present. There is also no way for the Commission to determine what steps the Company might have taken in 2013 to address these matters if the information had been disclosed. Given that, the Commission here focuses on whether the Company is suitable today.

With respect to honesty, integrity, and good character, the Commission is highly troubled by the evidence presented in the IEB Report and at the Commission's adjudicatory hearing. The evidence presented depicts a culture within the formerly founder-led Company wherein executives deferred to the whims of the CEO and founder, failed to hold that founder to the requisite code of conduct, and repeatedly failed to protect a class of its employees.

In terms of failures within the Company, the Commission is disturbed by repeated failures to document and investigate allegations of sexual harassment and assault, failures by certain executives and qualifiers with knowledge of accusations of sexual misconduct to report to the Company's Board and appropriate committees as well as failure to notify the Commission, seeming attempts to cover up allegations through private settlements, and general failures by qualifiers and executives to comply with the Company's human resources policies and to adequately safeguard the workplace for a class of employees. With respect to the 2005 rape allegation and settlement, individuals who had knowledge of the allegation in 2005 failed to investigate the matter as required by the Company's human resources policies, and it seems evident to the Commission that Mr. Wynn established Entity Y to process the 2005 settlement payment and remove any connection to him in order to conceal the payment from discovery which assured, among other things, that it would not be required to be disclosed to regulators. Some individuals at the Company were aware of the 2006 allegation, and the Company was undoubtedly aware of sexual harassment and assault allegations in 2008 and 2014-15, where Company funds were used to pay settlements to the alleged victims, but in each instance failed to investigate the allegations.

Furthermore, those individuals who had knowledge of the 2005 allegation and settlement failed to notify the Board until 2016, when Ms. Wynn filed a cross-claim in the *Okada* litigation alleging that Mr. Wynn had engaged in "reckless risk-taking behavior." Despite Company executives having knowledge that the 2005 settlement involved a rape allegation, they did not disclose the severity of the allegation to the Board but instead disclosed only that the issue was of a sexual nature. When the Board learned of the 2005 allegation in 2016, it questioned whether there had been additional allegations or settlements, but failed to investigate the admitted sexual

contact of the Company CEO with a subordinate as well as to open a wider investigation into what they should have seen could be a pattern of misconduct. Had the Board made the decision to open an investigation in 2016, it is likely that they would have become aware of the additional incidents/complaints from 2006, 2008, 2014, and 2015-16. However, the Company was so embroiled in seven years of toxic litigation in the *Okada* case that Board members believed that the cross-claim and allegation concerning Mr. Wynn's behavior was simply a litigation strategy resulting from Ms. Wynn's animosity towards her ex-husband and the Company.

Also troubling with respect to the Board's discovery of the 2005 allegation and settlement is the fact that the Board recognized the importance of this issue and demonstrated that awareness by reporting the cross-claim to the Nevada regulators, but failed to report it to the Commission.

With respect to the Company's failure to comply with its own policies and procedures, the Commission is deeply troubled by failures to comply with the Communications Protocol implemented in 2016; failures to train the Company's founder, Mr. Wynn, as well as members of the Board in the Company's zero tolerance harassment policy as well as to apply company policies to Mr. Wynn; and failure to adequately contract outside legal counsel free of conflict of interest to handle the allegations and corresponding settlements.

Additionally, the Commission is disturbed by the Company's failure to report the lawsuit filed against Company board member and qualifier Dr. Ray Irani related to human trafficking. Although this failure does not necessarily bear on the Company's suitability, it is a violation of the Commission's statute and regulations and will be addressed in Section V.

Finally, the Commission is highly disappointed that the Company chose to notify Nevada regulators of the impending WSJ article, but failed to notify the Commission. While the Company claims that this was a mere oversight, its notification of one regulator demonstrates that the Company was aware of the magnitude of the issue yet chose to keep the Commission in the dark until after the article was published.

With respect to the Company's business practices and its ability to establish and maintain a successful gaming establishment, the Commission is also concerned by several failures in corporate governance, some of which are intertwined with those issues of honesty, integrity, and good character discussed above, and many of which have been discussed above as pertaining to the individual suitability of Mr. Maddox. The Commission hereby notes specific failures in corporate governance, including the initial statement issued by Mr. Wooden to Company employees following the release of the WSJ article, which unabashedly defended Mr. Wynn at the expense of alleged victims of harassment and assault; the town hall meetings held by Mr. Wynn; the Board's "heavy heart" public statement upon Mr. Wynn's resignation; the failure to remove Mr. Wooden and instead placing him on probation contrary to the recommendation of the special committee; permitting the Company's head of security, Mr. Stern, to use Company resources to run an undercover operation to surveil its own employees, while simultaneously failing to use Company resources to investigate sexual assault and harassment allegations; and failing to terminate Ms. Sinatra for cause or in the alternative to include a claw-back provision in her separation agreement that would have allowed the Company to recoup some of her nearly \$10 million payout in the event of a future finding of wrongdoing on the part of Ms. Sinatra.

Notwithstanding those facts discussed above which greatly trouble the Commission, the Commission does not find that there exists substantial evidence that the Company's suitability determination should be disturbed at this time. While several of the instances noted above do reflect on the Company's honesty, integrity, and good character, there is no evidence that the Company lied to the Commission or willfully withheld information, as discussed above. Shortly after the release of the WSJ article, the Company formed a special committee to investigate the allegations set forth therein and to determine who in the Company had knowledge of the allegations and what they did with that knowledge, as well as to examine the Company's sexual harassment and hostile-free workplace policies. As a result, the major failures with respect to Company policies have been addressed, as discussed below, and major actors prevalent in the events from 2005-2018 have either resigned or been removed. That being said, some actions discussed in this section *do* constitute violations of Commission statutes and/or regulations, which will be addressed further in Section V.

In determining that the Company remains suitable at this point in time, the Commission considers the extensive changes that the Company has made to rectify past corporate failures. The Company has replaced executives who had knowledge of the sexual assault and/or harassment allegations against Mr. Wynn and failed to document, investigate, and/or notify the Board and/or regulators. The three remaining qualifiers are Mr. Maddox, Ms. Wynn, and Ms. Mulroy, who were discussed at length above. Given that the Company claims to have cleansed itself by removing the persons responsible for the wrongdoing, the Commission evaluates suitability today based on those who remain in control rather than on those who have been removed.

The Company's primary argument in support of its assertion that it remains suitable is that it has transformed the entity consistent with the principles espoused in Trap Rock. Trap Rock is essentially a series of cases out of New Jersey that looked at whether the removal from a company of certain individuals who had engaged in wrongdoing rendered the company as a whole to have the requisite moral integrity required to do business with the state. See Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471 (1971) and Trap Rock Industries, Inc. v. Sagner, 133 N.J.Super. 99 (1975) (collectively, "Trap Rock"). These cases have taken on relevance in the gaming industry context as they were referenced by the New Jersey Casino Control Commission in In the Matters of the Application of Bally's Park Place, Inc., N.J.A.R. 356, 402-403, FN 18 & 19 (1988). The Commission has never considered, or for that matter adopted, Trap Rock. While we decline to do so here, we do recognize the rationale of the relevant principles espoused therein and will utilize them as applicable in this matter.

We find the following principles persuasive. Similar to Massachusetts, see Merrimack Coll. v. KPMG LLP, supra, and Com v. Beneficial Finance Co., supra, the Trap Rock court held that "[a] corporation [] has no moral character. The moral responsibility of a corporation is one and the same with the responsibility of the individuals who give it direction []." Further, it held:

where, as here, corporate derelictions can be isolated and fixed to particular persons, the corporation's lack of moral responsibility in that situation should be synonymous with the moral defects of the responsible individuals. If, as a consequence, the corporation has purged itself of the offending individuals and they are no longer in a position to dominate, manage or meaningfully influence the business and operations of the corporation, the responsibility of the corporation should then be assayed, not upon the

moral infirmities of the removed malefactors, but upon the integrity of the persons who remain in ownership and control of it.

133 N.J.Super. 99 at 108.

These principles are certainly logical. A full analysis, however, depends on how one identifies the offending individuals. In the matter now before us, the Company has asserted that anyone who had any knowledge of sexual assault or misconduct and failed to take appropriate action has been removed or is no longer with the Company. As previously described, though, there are individuals who remain with the Company (Mr. Maddox, Ms. Wynn, and Ms. Mulroy) who had at least some knowledge of the allegations against Mr. Wynn and failed to take what we would consider to be appropriate action. Ms. Mulroy essentially acknowledged such and took responsibility for her shortcomings. For this reason, strictly adopting Trap Rock wholesale does not answer the ultimate question. To do that, we must review the corporate purge of offending individuals in the context of a number of other legal principles, as well.

We need not spend time describing why it was essential that Mr. Wynn, Ms. Sinatra, Mr. Tourek, and Mr. Wooden be purged from the Company. Certainly, their continued employment would make a finding that the Company possesses the requisite integrity, honesty, good character, and reputation exceedingly difficult to impossible, but they have been removed so we will not toil over the point. What is important is looking at who remains.

In evaluating this matter, we look to the principles described in In re Hiss, 368 Mass. 447 (1975) (disavowed on other grounds). Though this case is not squarely on point, we find its principles informing particularly given that it relates to a licensing issue involving a determination of character, and given that an individual of such notoriety and under such intense scrutiny was deemed suitable. In this case, the Massachusetts Supreme Judicial Court described sensitivities applicable to consideration of reform that we find compelling and applicable in this matter. In re Hiss is an interesting historical case involving the notorious Alger Hiss. Hiss was of course a United States government attorney who was ultimately convicted of perjury in 1950 based on matters involving espionage related to the Soviet Union. He was disbarred as an attorney in Massachusetts based upon these convictions. In re Hiss describes his effort to have his law license reinstated; an effort that was ultimately successful. We recite the most compelling passage:

Bar Counsel presupposes that certain disbarred attorneys, guilty of particularly heinous offenses against the judicial system, are incapable of meaningful reform which would qualify them to be attorneys and, further, that the public will never be willing to revise an earlier opinion that the offender was not a proper person to function as an attorney. If adopted the rule would provide that ‘no matter what a disbarred attorney’s subsequent conduct may be; no matter how hard and successfully he has tried to live down his past and stone for his offense; no matter how complete his reformation-the door to restoration is forever sealed against him.’ Such a harsh, unforgiving position is foreign to our system of reasonable, merciful justice. It denies any potentiality for reform of character. A fundamental precept of our system [] is that men can be rehabilitated. ‘Rehabilitation . . . is a ‘state of mind’ and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved ‘reformation and regeneration.’ Time and experience may mend flaws of character which allowed the immature man to

err. The chastening effect of a severe sanction such as disbarment may redirect the energies and reform the values of even the mature miscreant. There is always the potentiality for reform, and fundamental fairness demands that the disbarred attorney have opportunity to adduce proofs.

368 Mass. at 453-454 (internal citations omitted).

We agree with these sentiments. When we review the suitability of the Company in the context of the individuals who presently constitute the officers and directors of the Company, those who have been purged, the explanations as to why greater action was not taken by those who at least had some knowledge, and the remedial actions that have been taken, we are left satisfied that the Commission's previous determination that clear and convincing evidence as to the gaming licensee and all qualifiers' suitability should not be disturbed. The contrary finding would yield precisely the sort of harsh, unforgiving position that is foreign to our sensibilities.

We are also mindful, though, that "[r]eform is 'a state of mind' that must be manifested by some external evidence." Matter of Waitz, 416 Mass. 298, 305 (1993). While there is evidence of such reform, more is required, and close monitoring will be required to ensure that there always remains clear and convincing evidence that the gaming licensee and all qualifiers demonstrate the requisite integrity, honesty, good character and reputation. See G.L. c. 23K, § 12(a)(1).

With regard to changes that the Company has made to rectify past corporate failures, the Company has completely refreshed its Board of Directors and increased gender diversity, removing six members and bringing on not only a new Chair but five new members, three of which are women. In addition, the Company placed a mandatory retirement age on independent directors at 75, split the Chairman and CEO roles so that no one person may hold both positions, appointed a new general counsel, appointed a new president of Wynn Law Vegas, appointed a new senior vice president of human resources, and created a new compliance committee and new compliance officer position. The Company has also increased community engagement and volunteerism, launched a Women's Leadership Forum, conducted a Great Places to Work survey, and launched a Wynn Scholarship Fund.

In addition to the various factors referenced above, the Company has made a multitude of policy and organizational changes to address employee safety and training. Such changes include:

- Updates to the Company's "Preventing Harassment & Discrimination Policy;"
- New channels for reporting and filing employee complaints;
- New investigative protocols for employee complaints;
- Comprehensive annual harassment training;
- Updates to personal relationships and potential conflicts of interest policy;
- Updates to spa and salon policies specifically to address safety of employee interaction with guests;
- New diversity trainings for all employees; and
- Daily pre-shift briefings and quarterly manager's meetings.

These changes to the Company's philosophy, training, and operations show a newfound commitment and focus on all levels of employees which, combined with the ongoing successful business operations, continue to demonstrate that Wynn is likely to be a successful operator in Everett. As we have previously stated, there is no way to definitively determine how the Commission would have viewed this issue at any previous period of time. There is also no way for the Commission to determine what steps the Company might have taken in 2013 to address these matters if the information had been disclosed. Accordingly, we must view the Company as it is constituted in the present. For these reasons, we find this prong of the required elements of suitability to be in place. See G.L. c.23K, § 12(a)(3). While there is evidence of the reformed and improved business practices, more is required, and close monitoring will be necessary to ensure that there always remains clear and convincing evidence that sound business practices are in place to help ensure the Company workforce is provided with a safe environment. See G.L. c. 23K, § 12(a)(3).

When considering entity suitability, one of the critical components is the financial stability of the applicant. Neither the IEB's Report nor any evidence presented at the adjudicatory hearing constitutes substantial evidence of a lack of clear and convincing evidence that the Company is not financially stable; in fact, the opposite is true. HLT Advisory, Inc. ("HLT") completed a report and presented at the adjudicatory hearing on this topic. This report and its findings are included by reference herein and were not challenged. In short, the HLT report concluded that the Company's financial stability has not been negatively affected by the misconduct allegations asserted against Mr. Wynn, nor by his resignation and the various changes that have taken place within the Company. Mr. Maddox's efforts to maintain the financial integrity of the Company after Mr. Wynn resigned must be credited where he was able to place an enormous amount of Company stock with institutional investors as well as where he resolved long-standing litigation. Accordingly, this component of suitability remains strong. See G.L. c. 23K, § 12(a)(2).

As discussed in this section, the Company's (1) honesty, integrity, and good character; (2) business practices and business ability to establish and maintain a successful gaming establishment; and (3) financial stability and integrity were considered in determining whether it remains suitable. Accordingly, pursuant to the discussion above, the Commission does not find that there is substantial evidence of a lack of clear and convincing evidence that the Company meets the suitability standards as set forth in G.L. c.23K, § 12.

V. VIOLATIONS OF LAW

The record reveals that there were six applicable Company policies in place at times relevant to this matter. Specific language in multiple policies required that allegations of harassment of the sort evidenced by the record of this matter be reported to the Company's Employee Relations Department so that a thorough investigation could be conducted. Needless to say, there is substantial evidence that the Company routinely failed to comply with its own policies in this regard. These failures strike at the heart of this matter and served as a key contributor to the previously described broad systemic failures.

A. THE POLICIES

The following corporate policies were in effect at times relevant to this matter:

1. Sexual Harassment (IEB exhibit 9) (“sexual harassment policy”)
2. Zero Tolerance for Harassment and Discrimination (IEB exhibit 10) (“zero tolerance policy”)
3. Code of Business Conduct and Ethics (IEB exhibits 13 and 14, Wynn exhibit 6)²⁴ (“business conduct policy”)
4. Board of Directors Communications Protocol (IEB exhibit 65) (“Communications Protocol”)
5. Code of Personal Conduct (Wynn exhibit 7)²⁵ (“personal conduct policy”)
6. Personal Relationships (IEB exhibits 11 and 12) (“personal relationships policy”)

The Commission reviewed compliance with the policies solely with reference to the violations that took place once the Company was an applicant for a gaming license in Massachusetts, and then ultimately the licensee. Violations of policies that may have occurred prior to the Company inserting itself into the Massachusetts licensing process were not the subject of this review.

B. REPORTING AND INVESTIGATIONS REQUIRED

Reporting and investigation of complaints of harassment were required according to the terms of a number of policies, as follows:²⁶

- **The sexual harassment policy** (issued 11/9/04) provided, in pertinent part, that:

“All sexual harassment complaints are forwarded to the employee relations department. An immediate, complete, thorough, and (to the extent practicable) confidential investigation will be conducted. Upon the completion of such investigation, the Employee Relations Department will follow up with the employee.” See page 2.

“Department managers must immediately report sexual harassment complaints or any incidents of retaliation to the Employee Relations Department or the senior vice president of Human Resources.” See page 3.

“The Employee Relations Department, at the direction of the Legal Department, will conduct an immediate, complete, thorough, and confidential investigation.” See page 3.
- **The zero tolerance policy** (issued 11/9/04, revised 5/28/08), provided, in pertinent part:

²⁴ This was also submitted as part of the Company’s RFA-2 application as attachment 5-28-02.

²⁵ This was also submitted as part of the Company’s RFA-2 application as attachment 5-28-03.

²⁶ Certain of the policies were amended during the period covered by the Commission’s review. However, while some relevant provisions were relocated within a policy, none of the applicable language discussed in this section was removed or modified in any material way.

“What Happens After I Report My Concerns Your concerns will be promptly and thoroughly investigated by the Employee Relations Department in an impartial manner.” See page 5.

“Any supervisor who observes or becomes aware of any discriminatory, harassing, or retaliatory behavior as described in this policy, whether or not an employee has actually complained to the supervisor, must immediately report the situation to the Employee Relations Department and take appropriate steps to stop the offending behavior.” See page 5.

- **The business conduct policy** (issued 5/4/04, revised 2/22/13 and 8/1/16), provided, in pertinent part:

“If you know or suspect a violation of applicable laws, rules or regulations, the Code, or the Company’s related policies, you must immediately report that information to your supervisor or the Compliance Officer.” See page 8 of 5/4/04 policy.

“All reported violations will be promptly investigated and treated confidentially to the extent reasonably possible.” See page 9 of 5/4/04 policy.

“All reported violations of the Code will be taken seriously and promptly investigated.” See page 15 of 8/1/16 policy.

- **The Communications Protocol** (issued 8/1/16), provided, in pertinent part:

“Within a reasonable period of time after becoming aware of any of the following, executive management of the Company shall report to the Company’s Lead Independent Director:

2. Any matter that is likely to jeopardize the reputation of the enterprise, including those relating to the Company or its subsidiaries,

3. Any matter that could materially impact the financial statements of the company.”

- **The personal relationships policy** (issued 11/9/04, revised 10/3/16), provided, in pertinent part:

“Wynn believes in maintaining a professional work environment at all times and discourages romantic or intimate relationships involving direct or indirect supervisory relationship between employees regardless of whether the relationship is voluntary and/or welcomed by both parties.”

“Department managers are responsible for conducting themselves in a professional manner and strictly maintaining professional relationships with their employees at all times.”

C. VIOLATIONS

As previously described, and well documented in the record of this matter, there is substantial evidence that the Company neglected to follow its own corporate policies on a number of occasions. Though there are more extreme examples of violations, at a bare minimum, those with knowledge of the allegations and settlements previously described in this decision should have been spurred to action by the knowledge that the subject conduct was explicitly discouraged by the personal relationships policy regardless of whether it was ‘voluntary and/or welcomed by both parties.’ Nevertheless, the Commission finds the following violations:

1. In 2014, top company executives learned that an employee alleged that Mr. Wynn had raped her. The allegation was not reported to the Employee Relations Department and no investigation was conducted by the Company. This failure violated the sexual harassment policy, the zero tolerance policy, and the business conduct policy.
2. In 2014-15, top Company executives were made aware of complaints involving Mr. Wynn’s behavior towards employees of the spa. The allegation was not reported to the Employee Relations Department and no investigation was conducted by the Company. This failure violated the sexual harassment policy, the zero tolerance policy, and the business conduct policy.
3. In 2016, upon the filing of the amended cross-claim by Ms. Wynn as part of *Okada* litigation, top Company executives were effectively made aware of the existence of the 2005 settlement. The allegations that led to the settlement were not reported to the Employee Relations Department and no investigation was conducted by the Company. The fact that a settlement had been reached and a retraction signed is of no import. This failure violated the sexual harassment policy, the zero tolerance policy, and the business conduct policy.
4. In 2017, Mr. Wynn and Ms. Whennen were deposed as part of the *Okada* litigation. Notably, the Company’s general counsel, Ms. Sinatra, was present for their depositions. At each deposition, the testimony indicated that the 2005 matter originated with a rape allegation against Mr. Wynn. Ms. Sinatra never reported this information to the Employee Relations Department, and no investigation was conducted by the Company in the wake of receiving this information. This failure violated the sexual harassment policy, the zero tolerance policy, and the business conduct policy.
5. In 2017, during preparation for his deposition as part of the *Okada* litigation, Mr. Maddox was informed, essentially, that he may be asked about an assault having taken place as part of the 2005 matter. Though he was previously aware of the 2005 matter via the 2016 amended cross-claim, now he had a heightened awareness. Nevertheless, he did not report the matter to the Employee Relations Department and no investigation was conducted by the Company at this point. This failure violated the sexual harassment policy, the zero tolerance policy, and the business conduct policy.

The fact that many of the allegations and settlements were characterized as ‘consensual’ is of no import. The fact that those in positions of authority actually repeatedly accepted such

characterization reflects a complete lack of understanding of the applicable principles of law. The fact that a high ranking corporate executive is of the belief that a lower ranking employee is consenting to a sexual relationship, *i.e.*, that it appears to be voluntary, does not mean that the relationship was welcome by the employee. See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986). In such an instance, the relationship may not be consensual despite the executive's characterization as such. This is why it is critical to investigate any such complaints or information, however obtained. In the present case, the fact that there were allegations and settlements, with questionable retractions given the imbalance of power between the parties, should be sufficient indication that the employees involved likely did not view the relationships in the same light as Mr. Wynn. That fact alone demanded that a proper investigation be conducted in each instance. Not only did these corporate failures expose the Company to liability, see Faragher v. City of Boca Raton, 524 U.S. 775 (1998), but they also left employees vulnerable.

When distilled, it becomes clear that these violations of corporate policy served as a leading cause in the overall corporate systemic failures established by the evidence. Had the policies been followed, the subject allegations and settlements may have come to light sooner, and the matters may have been handled far differently. The Company assured its employees that "Wynn Las Vegas has zero tolerance for any form of sexual harassment and promotes a work environment that furthers the mutual respect of all its employees." See sexual harassment policy at page 1. Further, that "[a]ll employees, from highest management to the part-time staff, are responsible for following this policy and aiding in its enforcement... This policy equally protects all employees." See zero tolerance policy at page 1. The company fell far short of these ideals, and thereby failed its employees. The disregard by the Company for its own policies cannot be tolerated and warrants a sanction in accordance with G.L. c. 23K, § 4(15) and (25). Further, to the extent that the policies were submitted to the Commission as part of the RFA-2 process and not abided by, it constitutes a violation of G.L. c. 23K, § 21(a)(1) further supporting disciplinary measures.

There is substantial evidence that the Company violated G.L. c. 23K, § 1(3) and 205 CMR 115.01(4)(j) on two occasions:

1. The Company never notified the Commission of the Fifth Amended Cross-claim filed as part of the *Okada* litigation following the Commission's adoption of the cited regulation.
2. The Company never notified the Commission of the existence of the litigation involving Dr. Ray Irani, a member of the Board of Directors and qualifier to the gaming licensee.

In an effort to enhance and clarify the continuing duty of the gaming licensees and qualifiers to notify the IEB relative to certain material information, 205 CMR 115.01(4) was adopted by the Commission. This section became effective on October 6, 2017. These regulations merely clarified the long-standing culture of disclosure inherent to the regulator-licensee relationship and widely recognized by the Company throughout this investigation and proceeding.

Pursuant to 205 CMR 115.01(4)(j):

The gaming licensee and each qualifier shall have a continuing duty to notify and update the IEB, in writing, within ten days of the occurrence, [] or where applicable, gaining knowledge of the following:

the gaming licensee and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the gaming licensee or a qualifier, that may reasonably threaten the economic viability of the gaming licensee or a qualifier, or that alleges a pattern of improper conduct by the gaming licensee or a qualifier over a sustained period of time

The Fifth Amended Cross-claim was filed in the litigation in 2016. As a matter of transparency, the Commission should have been notified of the contents, as the Nevada regulators were, in 2016. Although this failure did not constitute a violation of any legal obligation, upon the enactment of section 115.01(4)(j) in 2017, the Company had a specific obligation to notify the IEB of the existence of the cross-claim. The cross-claim was clearly something that “may reasonably threaten the economic viability of the gaming licensee or a qualifier, or that alleges a pattern of improper conduct by the gaming licensee or a qualifier over a sustained period of time” The substance of the amended cross-claim implicated both of these standards and thus mandated a report to the IEB. No such notice was ever provided.

Similarly, the matter involving Dr. Irani demanded a report to the Commission. The allegations against Dr. Irani became public in April of 2016. While no specific reporting obligation existed at the time, that changed upon the enactment of section 115.01(4)(j) in 2017. At that time, the Company had an obligation to notify the IEB of the existence of the case involving Dr. Irani as it “allege[d] a pattern of improper conduct by [] a qualifier over a sustained period of time” No such notice was ever provided.

VI. CONCLUSIONS, PENALTIES, AND CONDITIONS

As stated throughout this decision, a ‘paramount policy objective’ of the Gaming Act is “ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme.” G.L. c. 23K, § 1(1). “Gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability.” *Id.* at § 1(3). “Any license awarded by the commission shall be a revocable privilege and may be conditioned, suspended, or revoked upon: (i) a breach of the conditions of licensure, including failure to complete any phase of construction of the gaming establishment or any promises made to the commonwealth in return for receiving a gaming license; (ii) any civil or criminal violations of the laws of the commonwealth or other jurisdictions; or (iii) a finding by the commission that a gaming licensee is unsuitable to operate a gaming establishment or perform the duties of their licensed position.” *Id.* at § 1(9). “[T]he power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration, and enforcement of [G.L. c. 23K.]” *Id.* at § 1(10).

The Commission is broadly granted “all powers necessary or convenient to carry out and effectuate its purposes.” *Id.* at § 4. This grant includes, but is not limited to, the power to assure

that licenses shall not be issued to, or held by, and that there shall be no material involvement directly or indirectly with, a gaming operation or the ownership thereof, by unqualified, disqualified, or unsuitable persons or by persons whose operations are conducted in a manner not conforming with this chapter. See id. at § 4(9). It also includes the power to deny an application or limit, condition, restrict, revoke, or suspend a license, registration, finding of suitability or approval, or fine a person licensed, registered, found suitable, or approved for any cause that the commission deems reasonable. See id. at §4(15). The Commission may also levy and collect assessments, fees, and fines, and impose penalties and sanctions for a violation of this chapter or any regulations promulgated by the commission. See id. at § 4(25).

The Commission has determined that the evidence does not rise to the level required to disturb the previous suitability determinations. It is troubled by the systemic failures and pervasive culture of non-disclosure presented in the IEB report and adjudicatory hearing. Specifically, the corporate culture of the founder-led organization led to disparate treatment of the CEO in ways that left the most vulnerable at grave risk. While the Company has made great strides in altering that system, this Commission remains concerned by the past failures and deficiencies. Lastly, as stated at the adjudicatory hearing, the Company's laudable efforts do not erase the past failures so any resolution of these allegations necessarily requires an assessment of punishment and deterrence. In crafting appropriate remedial measures, the Commission considered many factors, including, but not limited to: the willfulness of the violations in failure to comply with policy or notify this Commission; the consequences of the failures, specifically concerning the safety and wellbeing of employees; the deterrence factor in ensuring future compliance; and most importantly, furthering the interests of the statute - specifically ensuring compliance, integrity and financial viability of the licensee.

Pursuant to G.L. c. 23K, § 4(15) and (25), in order to help ensure future compliance and to penalize for past transgressions, the Commission imposes the following penalties and conditions.

A. PENALTY IMPOSED ON THE COMPANY

The Commission hereby assesses a fine in the amount of **\$35,000,000.00** to Wynn Resorts, Limited for all of the reasons described in the decision. See G.L. c. 23K, §§ 4(15)²⁷ and (25),²⁸ and G.L. c. 23K, § 1(10).²⁹

The intent of the fine is twofold:

²⁷ G.L. c. 23K, § 4(15) provides, in pertinent part, that: "The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to: [] fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable" In accordance with G.L. c.23K, § 2, a 'person' is defined as "an individual, corporation, association, operation, firm, partnership, trust or other form of business association."

²⁸G.L. c. 23K, § 4(25) provides that: "The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to: [] levy and collect assessments, fees and fines and impose penalties and sanctions for a violation of [chapter 23K] or any regulations promulgated by the commission"

²⁹ G.L. c. 23K, § 1(10) provides that "the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration and enforcement of [G.L. c. 23K]."

- (1) to penalize the Company for systemic failures of certain executives and members of the Board of Directors, past violations, and lack of compliance, and
- (2) to deter future violations and, in conjunction with the conditions that follow, to help ensure compliance moving forward.

The size of the fine is commensurate with the scope of the violations, and designed to be sizeable enough to have a meaningful impact. Given our findings, it is now in the interest of the Commonwealth that the gaming licensee move forward in establishing and maintaining a successful gaming establishment in Massachusetts. One of the key metrics by which we will measure that success will be the overall wellbeing, safety, and welfare of the employees. A second but equally important metric is the importance of compliance and communication with the regulator. This penalty is designed to guarantee these practices.

“[G]aming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity” G.L. c. 23K, § 1(3). We believe the fine in this case is appropriately tailored to ensure that this ideal is backed by the level of import that the law intended. To be clear, the fine is based on acts and omissions that occurred from the moment the Company first availed itself of the Commission’s jurisdiction through to the present. In particular, the fine is based on the violations specified in section V of this decision, and the general failure by the company to notify the Commission of potentially derogatory information particularly where, as a gaming licensee, it did notify the Nevada regulators. This failure shows that the Company did not appreciate the value of its Massachusetts license.

B. CONDITIONS IMPOSED ON THE COMPANY AND THE BOARD OF DIRECTORS³⁰

1. Wynn Resorts shall maintain the separation of Chair and CEO for at least the term of the license (15 years).
2. At the Company’s expense and with the Company’s full cooperation, the Commission shall select an independent monitor: (i) to conduct a baseline assessment that will include, *without limitation*, a full review and evaluation of all policies and organizational changes adopted by the Company as described by the Company to the Commission as part of the Adjudicatory Record and the following business practices:
 - (a) Implementation of and compliance with all human resource or “HR” policies that reflect current best practices;
 - (b) Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees;

³⁰ The Commission notes that the Company raised a number of suggested conditions in its post-hearing brief, including, but not limited to: (1) a prohibition on Wynn Resorts, Limited, Wynn MA, LLC, their qualifiers, and any employee thereof entering into a business relationships with Mr. Wynn; and (2) a prohibition banning Mr. Wynn from its properties. While the Commission does not adopt these suggestions, it leaves it to the Company to make the determination to adopt whatever conditions it deems necessary and prudent.

- (c) Adequacy of internal reporting and communication channels throughout the Company and their alignment with up-to-date organizational charts and reporting structures; and
- (d) Use of outside counsel and maintenance of and adherence to de-conflicting policies and procedures;

and (ii) to recommend to the Company such measures and other changes necessary to correct any deficiencies identified through such baseline assessment, such recommendations of the monitor may be adopted as license conditions at the Commission's discretion. The Company shall comply with the recommendations of the independent monitor, unless relief is otherwise petitioned for by the Company and granted by the Commission. The independent monitor shall present the baseline assessment and any initial recommendations to the Commission within six months of its selection and shall report to the Commission no less than annually in accord with a mutually agreed upon schedule between the independent monitor and the Commission. The independent monitor shall make such additional recommendations to the Company that the monitor deems appropriate on an ongoing basis over the course of its engagement.

As to the Board of Directors, the independent monitor shall assess the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and training programs for new and current members.

The independent monitor will be responsible for evaluating and reporting to the Commission on the effectiveness of the Company's policies, practices and programs under the purview of the independent monitor.

The Commission reserves the right to further clarify the scope of the independent monitor's role in documents required as part of a competitive selection bid.

The condition set forth in this paragraph two requiring an independent monitor shall be in place for five years, subject to any petition for relief to the Commission after three years.

3. The Board of Directors shall provide to the Commission timely reports of all Directors' attendance records of both Board and assigned Committee meetings until otherwise directed.
4. Wynn MA, LLC shall train all new employees on the Preventing Harassment and Discrimination Policy (or equivalent policy) within three months of opening.
5. Any civil or criminal complaints or other actions filed in any court or administrative tribunal against a qualifier shall be reported to the Commission immediately upon notice of the action.

C. PENALTY IMPOSED ON MATTHEW MADDOX

The Commission hereby assesses a fine in the amount of **\$500,000.00** to Matthew Maddox. See G.L. c. 23K, §§ 4(15)³¹ and (25),³² and G.L. c. 23K, § 1(10).³³

The intent of the fine is to penalize Mr. Maddox for past violations, including a lack of adherence to Company policies, and to deter future violations thus ensuring prospective compliance. As described in the decision, the Commission was not unanimous in its view as to Mr. Maddox's suitability. However, the Commission was unanimous in its concern that he routinely failed to exercise the proper diligence, express the requisite level of concern, and understands the magnitude of the risk and legal implications associated with much of the information of which he was, or should have been, aware. In conjunction with the conditions that follow, the fine is part of an overall remedy designed to help ensure that Mr. Maddox continues in his stated mission of reforming the Company. Such a transformation will allow the Company to successfully establish and maintain a successful gaming establishment in Massachusetts. Again, such success is defined by the Commission to include the creation of an environment that promotes the overall well-being, safety, and welfare of the employees, as well as one in which compliance and transparency with the regulator are paramount.

The fine is therefore assessed for all the reasons described herein, most particularly set forth in Section IV above. Specifically, Mr. Maddox's clear failure to mandate documentation and investigation of the specific complaint brought to his personal attention:

In 2014 or 2015, upon learning that a spa employee was made uncomfortable by comments made by the CEO, Mr. Maddox failed to recognize the potential harassment and to make the required notification in accordance with the corporate policies. Accordingly, no investigation was conducted. As the Company's president and in the immediate position below that of the CEO who was the subject of the complaint, Mr. Maddox was best positioned to ensure that the matter was properly handled.

D. CONDITIONS IMPOSED ON MATTHEW MADDOX

The Board of Directors shall engage an executive coach and any additional necessary resources to provide coaching and training to Mr. Maddox focused on but not limited to (i) leadership development, (ii) effective and appropriate communication for internal, Company-wide reporting and messaging, (iii) enhanced sensitivity to and awareness of human resource issues arising in complex workplace environments that, without limitation, relate to diversity (including

³¹ G.L. c. 23K, § 4(15) provides, in pertinent part, that: "The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to: [] fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable" In accordance with G.L. c. 23K, § 2, a 'person' is defined as "an individual, corporation, association, operation, firm, partnership, trust or other form of business association."

³² G.L. c. 23K, § 4(25) provides that: "The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to: [] levy and collect assessments, fees and fines and impose penalties and sanctions for a violation of [chapter 23K] or any regulations promulgated by the commission"

³³ G.L. c. 23K, § 1(10) provides that "the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration and enforcement of [G.L. c. 23K]."

disability), implicit bias, hostile work environments, inherent coercion, sexual harassment and assault, human trafficking, and domestic violence, and (iv) team building and meaningful collaboration. The Board of Directors shall have full discretion as to its oversight of the executive coach, the length of engagement, and its method of assessing the benefit of such coach to Mr. Maddox.

SO ORDERED.

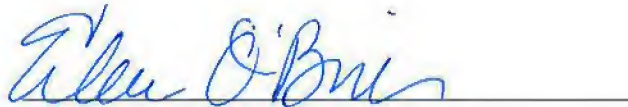
MASSACHUSETTS GAMING COMMISSION



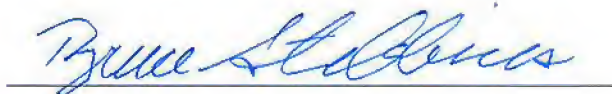
Cathy Judd-Stein, Chair



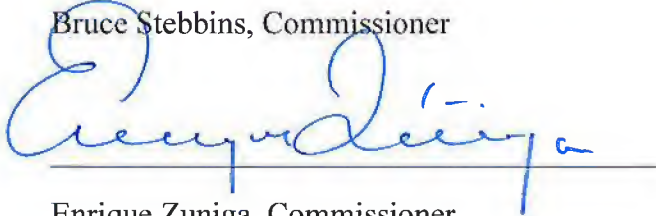
Gayle Cameron, Commissioner



Eileen O'Brien, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: April 30, 2019